

United States
Court of Appeals

For the Ninth Circuit.

No. 12300

WALTER D. ACKERMAN, JR., individually and as Attorney General
of the Territory of Hawaii, and JEAN LANE, individually and as
Chief of Police of the County of Maui,

Appellants,

vs.

INTERNATIONAL LONGSHOREMEN'S & WAREHOUSEMEN'S
UNION, a voluntary unincorporated association and labor union,
et al.,

Appellees.

E. R. BEVINS, individually and as County Attorney for the County of
Maui, and WENDELL F. CROCKETT, individually and as Deputy
to the County Attorney for the County of Maui,

Appellants,

vs.

INTERNATIONAL LONGSHOREMEN'S & WAREHOUSEMEN'S
UNION, a voluntary unincorporated association and labor union,
et al.,

Appellees.

No. 12301

WALTER D. ACKERMAN, JR., individually and as Attorney General
of the Territory of Hawaii,

Appellant,

vs.

INTERNATIONAL LONGSHOREMEN'S & WAREHOUSEMEN'S
UNION, a voluntary unincorporated association and labor union,
et al.,

Appellees.

vs.

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Maui, and WENDELL F. CROCKETT, individually and as Deputy
to the County Attorney for the County of Maui,

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Transcript of Record

In Four Volumes

Volume II Pages 567 to 1066

FILED

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Territory of Hawaii

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Appeals from the United States District Court for the
Territory of Hawaii

In the Circuit Court of the Second Judicial Circuit
Territory of Hawaii

Criminal No. 2412

TERRITORY OF HAWAII

vs.

ABRAHAM MAKEKAU, ELPIDIO SIRUET,
MARIANO BALDUA, NARCISSE SIPE, and
ANTONIO MENDES,

Defendants.

Criminal No. 2413

TERRITORY OF HAWAII

vs.

DIEGO BARBOSA, JOHN MAILE, VICTOR
DEGAMO, HARRY KAPENA KAOPUIKI,
ISAMI A. NITTA, AH SING AH HO, JAMES
KIA AIKALA, SHIGERU YAGI, BASILISO
ARRUIZA, MIDORI ODA, SHIGEYUKI
MATSUURA,

Defendants.

January, A. D. 1947 Term

(Monday, September 15th, 1947, 9:15 a.m.)

TRANSCRIPT

The Court: Call the cases, Mr. Clerk.

Deputy Clerk: Criminal No. 2412, Territory of
Hawaii vs. Abraham Makekau, et al.

The Court: There is another one also.

Deputy Clerk: Criminal No. 2413, Territory of Hawaii vs. Diego Barbosa, et al.

The Court: Are counsel ready? [1*]

Mr. Resner: Ready.

Mr. Crockett: Ready for the prosecution, if the Court please.

Mrs. Bouslog: May it please the Court, I think the defendants are still outside the court room.

The Court: It is up to counsel to bring them in. It isn't up to the Court.

(Defendants called into court room by Mrs. Bouslog.)

Mrs. Bouslog: Your Honor all the defendants are present in these two cases except one of the defendants—Baldua, who is in the hospital.

The Court: So to explain the discrepancy that will appear in the minutes as to the opening of court, it should appear that the Court has been waiting on counsel and not counsel on the Court.

I understand that there has been filed in the case an amended challenge for cause of the Grand Jury panel as a whole and an amended challenge to the individual grand jurors. Does the prosecution resist the challenge or concede.

Mr. Crockett: The prosecution resists the challenge, if the Court please, and will proceed on the hearing.

The Court: You may proceed. Is counsel for

* Page numbering appearing at foot of page of original Reporter's Transcript.

the defendants presenting the challenge presenting any testimony? [2]

Mr. Resner: Yes, if the Court please. The mere statement of counsel for the prosecution that they resist the challenge is not sufficient, as I see it, to disallow the amendment. It is an amendment purely as to form and is directed to the discretion of the Court.

The Court: I think counsel misunderstood. The Court's question was directed as to whether they admitted the challenge and wanted the grand jury dissolved or whether or not they resisted the challenge and wanted to proceed to set forth and establish your challenge as set forth in your amended challenge.

Mr. Resner: I see, because we proceed on the amended challenge, and I direct the Court's attention to the fact that the amendment was filed simply to include the proposition that we challenge not only the grand jury as a whole, the fifty members thereof, but the array of persons who are intended to take possible action against these defendants; namely, the array of twenty-one grand jurors. We object to both the panel as a whole and the array as such in this case.

The Court: I understand you are proceeding on the amended challenge, and if you have any testimony to offer the Court, please proceed.

Mr. Resner: Yes, very well. I might state by way of preface what it is we expect to show to the Court.

The Court: Make it brief, please. [3]

Mr. Resner: The theory upon which we proceed is that the instant grand jury as a whole and the array in this particular case is not a representative grand jury, not a democratic grand jury, not a cross section of the community, and, therefore, not an impartial and fair grand jury to which any persons, and particularly these defendants, in a criminal case are entitled under the Constitution and laws of the United States of America and of the Territory of Hawaii and the Organic Act of the Territory. We contend that there has been an arbitrary and deliberate exclusion of members of the so-called working class group and a deliberate inclusion of members of the so-called employer or owner group so that it is not representative of the population over which this court exercises jurisdiction.

Secondly, we contend that there has been an arbitrary and unfair discrimination with regard to the racial composition of the grand jury in that persons of non-caucasian origin have been arbitrarily and systematically excluded and those of caucasian origin have been systematically and arbitrarily included, so that the population make-up of the grand jury on a racial basis is not representative of the area over which this court exercises jurisdiction.

Next, we contend that since admittedly there are no women upon the grand jury or the array that that constitutes a violation of the Organic Act, the statutes [4] of the Territory, of the Nineteenth Amendment to the Constitution of the United States,

and the Fifth, Sixth and Fourteenth Amendments; and the arbitrary exclusion of women from the grand jury is unconstitutional and vitiates it as a whole.

Those in the main are the three particularly important points that we stress.

We also will demonstrate to the Court that a Territorial requirement that a grand juror understandably, as the statute employs the term, must speak, write and use the English language is such that it vests in the jury commissioners and in the Court arbitrary power to set up their own standards of education for membership on the grand jury, as a result of which the grand jury is not representative of the educational groups in the community—even though those educational groups having less formal education than some will be proper grand jurors—and that the statute permits the Court and the commissioners to discriminate, and they have discriminated in that regard.

Now, if the Court please, we will call as our first witness, Mr. John Reinecke.

JOHN E. REINECKE

having been first duly sworn, was examined and testified as follows: [5]

Direct Examination

By Mr. Resner:

Deputy Clerk: Please state your name.

Witness: John E. Reinecke.

Mr. Resner: If your Honor please, before we

(Testimony of John E. Reinecke.)

proceed to question Mr. Reinecke, I assume that the Court will take judicial notice of the names and addresses and other data concerning the grand jurors on the instant panel and instant array.

The Court: The matter is before the Court as far as this record shows and any such reference to the same may be made by either counsel.

Mr. Resner: Very well. I think that we shall have a list of those jurors and their addresses in evidence.

The Court: That is up to counsel.

Mr. Resner: Very well, but I assume that the Court had such a record available, and if not, we will produce it.

Now, Mr. Reinecke, will you state your full name, please?

Witness: John E. Reinecke.

Q. Your address, sir?

A. 1555 Piikoi Street, Honolulu.

Q. And what is your profession?

A. A school teacher.

Q. At what place?

A. At Farrington High School, Honolulu. [6]

Q. How long have you enjoyed that position, Mr. Reincke?

A. I have been in the present position three years—beginning my fourth year.

Q. What subjects do you teach there?

A. I teach English and Social Studies.

Q. And what do your courses in Social Studies include?

(Testimony of John E. Reinecke.)

A. Generally, it is usually called Civics; that is, Government with a smattering of Economics and Sociology.

Q. What is your educational background?

A. I have Bachelor's degree; an M. A., 1935, from the University of Hawaii; Ph.D., 1937, Yale.

Q. In what did you take your Doctor's degree?

A. In the field of race relations.

Q. And when did you obtain your Ph.D.?

A. 1937.

Q. Have you been teaching since then?

A. I have.

Q. What was your first teaching position?

A. One year at the University of Hawaii.

Q. What did you teach there?

A. Sociology and Anthropology.

Q. What was your next teaching position?

A. In the public school system of Hawaii.

Q. And what course did you teach there?

A. English and Social Studies. [7]

Q. Now, do you have some particular field of work in which you have specialized so far as your study and work are concerned?

A. Yes, I have two. One of them is the one in which I have done a great deal of academic work. That is sociology of languages. The other is one in which I have been interested for the past eight or nine years—the development of labor relations in Hawaii, and, incidentally, the effect of labor relations upon race relations.

(Testimony of John E. Reinecke.)

Q. Now, just——

A. May I add that I have in the past two years and a half studied to some extent the industrial structure of Hawaii.

Q. Now, what material have you gone to in connection with your study of labor relations and industrial activity and composition of the Territory of Hawaii.

A. You mean written sources?

Q. Written sources.

A. Largely to government reports, to finance reports, and a great deal of the material one has to pick up here and there from newspapers in Hawaii. Also a certain amount is—particularly on the labor side—is gained by personal contacts.

Q. Mr. Reinecke, with regard to the County of Maui and the Islands of Maui, Lanai and Molokai, which make up the county, could you tell us some of the [8] results of your studies and investigations on the occupational make-up of the county?

A. I have—I don't have the figures in hand here of the occupational distribution for Maui County. I believe that Mr. Harry Oshima, who is present here, has that. However, I prepared some material on the firms which dominate the economy of this county.

Q. Well, let's go into that proposition from the question of business ownership in Maui County, and would you tell us please what your study reveals in that regard.

(Testimony of John E. Reinecke.)

A. Yes. Maui County is essentially an agricultural county. The industry here is incidental to the production of pineapple and sugar cane. And in this county, which is made up of three islands of any importance, there are ten plantation units; also some four or five subsidiary firms, subsidiary to these plantations.

Q. Would you give us those firms?

A. Yes. And there are about four or five large ranches. These firms are as follows:

Q. In giving us the names of the firms, could you also indicate what particular kind of business or activity they carry on?

A. Yes, I can do that.

Q. All right. Proceed then. [9]

A. I will list first the plantation units. On the Island of Lanai, there is the Hawaiian Pineapple Company Plantation. On the Island of Molokai, there are two pineapple plantations, one conducted by California Packing Corporation and the other by Libby, McNeill and Libby; and one large ranch, Molokai Ranch, Limited. On this island, there——

Q. When you refer to “this island” you mean Maui?

A. On this island, Maui, there is Hawaiian Commercial and Sugar Company, Limited; Maui Agricultural Company, Limited; Pioneer Mill Company, Limited—which incidentally has a wholly owned subsidiary called Lahaina Ice Company, Limited;

(Testimony of John E. Reinecke.)

and finally, Wailuku Sugar Company. Those are the four sugar companies.

Q. Now, the four you have mentioned just previously, starting with Maui, are the four sugar producing companies? Now——

A. That is true—H. C. & S., M. A., Pioneer Mill, and Wailuku Sugar.

Q. I don't think you mentioned it, but Hawaiian Pineapple Company of Lanai and CALPAC and Libby, McNeill & Libby and Molokai Ranch are all pineapple producing companies?

A. Molokai Ranch is a cattle ranch.

Q. Molokai Ranch is a cattle ranch?

A. Yes. The other three are pineapple producers. I [10] think that the Hawaiian Pineapple Company also has a ranch, incidentally. It is common practice for the plantations to conduct ranches on some of their land.

Then, further, on this Island there are three pineapple units—Baldwin Packers, Limited—plantation and cannery; a branch of Libby, McNeill & Libby; and Maui Pineapple Company, Limited.

Q. Those three are what, Mr. Reinecke?

A. Those are pineapple producers.

Q. These are canneries, are they, here?

A. Canneries and plantations. There are several large ranches, outstanding among which are Haleakala Ranch, Limited; Ulupalakua Ranch, Limited; and Hana Ranch, Limited. Hana Ranch was formerly the Kaeleku Sugar Company. The growing of

(Testimony of John E. Reinecke.)

sugar has been discontinued. The place now is run as a ranch hotel.

Now, there are several subsidiary companies. American Can Company has a small factory on this Island servicing the three pineapple canneries. There is an East Maui Irrigation Company owned by H. C. & S. and M. A. Company. There is Kahului Railroad Company, almost wholly owned by H. C. & S.; and Maui Electric Company which is dependent upon H. C. & S. for its power. And I should perhaps explain what the connections of each of these firms are. [11]

Q. The connections between themselves?

A. Yes, and also the control that is exercised over them.

Q. All right, will you give us that information next, Mr. Reinecke?

A. Yes. Three of the firms represented are mainland corporations—American Can Company, California Packing Corporation, and Libby, McNeill & Libby. All the rest are mostly connected with one or another of the “big five” factors. For example, the Hawaiian Pineapple Company is connected with Castle & Cooke, Limited, which owns 18% of the stock and acts as its agent. Pioneer Mill Company is connected with American Factors, Limited, which owns 26% of its stock. The Wailuku Sugar Company is represented by C. Brewer Company, Limited. The remainder of the firms are closely tied in with Alexander & Baldwin, Limited.

(Testimony of John E. Reinecke.)

This firm, Alexander & Baldwin, Limited, acts as agent for all of them except Haleakala Ranch Company and Maui Electric Company.

Q. It acts for which, Mr. Reinecke?

A. It acts as agent for all except Haleakala Ranch and Maui Electric Company.

Q. Acts for all which?

A. All these remaining firms with the exception of Hana Ranch.

Q. And the ones that you have named there have connections with either Castle & Cooke and American Factors [12] or C. Brewer?

A. That's right. Kaeleku Sugar Company used to be represented by C. Brewer & Company, Limited. I don't know whether Hana Ranch is still represented by them or not.

But, now, returning to the Alexander & Baldwin set-up—Alexander & Baldwin owns some 33% of the stock in Hawaiian, Commercial & Sugar Company, and it in turn holds most of the stock, over 90%, in the Kahului Railroad. Alexander & Baldwin hold 24% of the stock in Maun Agricultural Company, and M. A. Company and H. C. & S. together own East Maui Irrigation Company. Furthermore, Maui Agricultural Company owns a great deal of the stock of Maui Pineapple Company, Limited. The latest figures I have are 14,733 shares.

Q. What is the source of those figures, Mr. Reinecke?

(Testimony of John E. Reinecke.)

A. From various sources. Partly from the Hawaiian Manual of Securities; partly from a Hawaiian investment manual—just a moment, I will have the title of that—here it is—“An Investor’s Guide to Hawaii”, Blythe & Company, Incorporated; the figures which they gave were as of the close of 1944. Baldwin Packers also is represented by Alexander & Baldwin. I don’t know the per cent of the stock held. It comes to something like 18,750 shares. Ulupalakua is represented [13] by Alexander & Baldwin. It is owned by the Baldwin family. Haleakala Ranch I don’t believe is represented by Alexander & Baldwin, but it is owned by members of the Baldwin family. Maui Electric Company—I understand that a large block of stock in it was recently purchased by Alexander & Baldwin. Furthermore, the manager of Kahului Railroad Company is president of Maui Electric Company.

Q. Who is that?

A. Mr. William Walsh. Finally, as a subsidiary one might include Maui Publishing Company, Limited, which issues the Maui News. Stock is held in this company by, among others, H. C. & S. and Pioneer Mill—two of the large plantations.

Q. Let me interrupt here, Mr. Reinecke, to ask you to explain, so that a person not familiar with the economy of Hawaii might read the record here and get an understanding of the situation, just what the Factors are and what their position is, their relationship to the economy of the Territory—those

(Testimony of John E. Reinecke.)

Factors whom you have named in connection with ownership of the various industrial concerns and agricultural concerns on Maui.

A. The Factors, the——

Mr. Crockett: To which we object. I submit that what the relation to the Factors might be to the corporation—I submit has no bearing to any issue in [14] this matter. I haven't made objections to the evidence which has been heretofore introduced—in fact, I supposed on occasion that counsel would connect it up to show how it had a bearing upon any issue of this particular case. Now he is going back to show what may be the relation of the Factors to these corporations that have been set forth as being here on the Island of Maui. We submit it has no bearing whatsoever upon any issue in this particular case. The question we are trying is the qualification of certain grand jurors, the arbitrary selection by the Jury Commissioners. What has the relationship between the Factors to do with the discretion which the statute has vested in these Jury Commissioners?

Mr. Resner: Well, I don't think that calls for much argument, if the Court please. We are proceeding on the theory announced by the United States Supreme Court which is found in Thiel vs. Southern Pacific Company, which is cited in our Memorandum of Authorities. And I think we will show fairly conclusively that the Factors dominate the industry of Hawaii; they dominate the industry

(Testimony of John E. Reinecke.)

of Maui; and the composition of the grand jury of Maui is made up of persons who are associated with or beholden to the Factors.

The Court: Mr. Resner, there is a much more preliminary problem which the Court has been waiting to find [15] out, but by virtue of their being no objection, the Court has not interfered with your examination. Are you intending to show that the Jury Commissioners are beholden to the Factors and consulted the Factors in relation to the selecting of these grand jurors?

Mr. Resner: What we hope to show, if your Honor please—we will show that in so far as the Jury Commissioners are concerned, there has been a deliberate selection of persons who are associated with the Factors as members of the grand jury.

The Court: That is evading the question of the Court, Mr. Resner, and you are quite aware of the fact. Are you intending to show that the Jury Commissioners picking out these jurors deliberately are beholden to the Factors or selected them from the standpoint that these men would be beholden and controlled by the Factors?

Mr. Resner: I don't quite understand the Court's question. We don't have to show any such thing. All we have to show is that there is a deliberate selection of persons.

The Court: The objection is sustained. The Court is not interested in the abstract proposition of the Factors' inter-relationship in the economy

(Testimony of John E. Reinecke.)

until you show preliminarily an action by the Jury Commissioners which is reprehensible, and then the Court may permit such a stating as to indicate to what extent the bias [16] may play.

Mr. Resner: Your Honor——

The Court: The Court has ruled. You may take an exception and proceed.

Mr. Resner: I only want——

The Court: I have no cause for any argument after once ruling.

Mr. Resner: I will——

The Court: Now, sit down, please, and go on with your examination.

Mr. Resner: I should like to take up a new point, Judge.

The Court: The Court has ruled. You may have an exception. Your exception will protect you. Do we understand one another?

Mr. Resner: I am not quite sure that I do, your Honor.

The Court: Well, proceed on your misunderstanding. I am sorry my English isn't plain enough.

Mr. Resner: The English is plain. I question the idea.

The Court: A little more of that comment, Mr. Resner, and you and I will have to have a show down. You understand this is a court room and I have ruled.

Mr. Resner: I am trying to, Judge.

Mr. Reinecke, with regard to the economy of the

(Testimony of John E. Reinecke.)

[17] County of Maui, with regard to the firms which you have listed here in industry and agriculture, what percentage of the business activity of Maui are these firms engaged in and exercise ownership and control over?

Witness: By far the largest part. As nearly as I can estimate, there are something like 11,000 persons employed by these firms which I have named. I know that union members paid up—dues paid members, according to the latest figures, come to almost exactly 7,000 for these firms.

Q. That is, union members employed by these firms number 7,000?

A. 7,000. Naturally, there are several thousand employees who are not union members.

Q. Is there any way of including percentage ownership of the economy of Maui on the part of these firms which names you have given us, whose stock ownership you have pointed out to us?

A. I do not have the figures, but it is obvious that they own by far the greater part of the assets in this county. I might further call your attention to the dominant place of the Alexander & Baldwin firm, two of the sugar companies, two of the pineapple companies, two of the ranches, Kahului Railroad Company, and two of the smaller subsidiaries being controlled by Alexander & [18] Baldwin. Furthermore, the Baldwin family is largely in control of Alexander & Baldwin and its firms. Some thirteen years ago, I believe the Baldwin family was

(Testimony of John E. Reinecke.)

estimated to control something like \$15,000,000.00 out of \$24,000,000.00 of the sugar assets of this Island.

Q. Are the two industries of the County of Maui primarily sugar and pineapple?

A. They are.

Q. To what extent?

A. Ranching is a poor third.

Q. What percentage of the business activity, industrial activity of Maui would you say pineapples and sugar occupy.

A. I can't say offhand.

Q. Can you approximate it on the basis of any——

A. From the basis of the employment opportunities, I would say about 70%, but I don't know as to assets. That is purely offhand, Mr. Resner.

Q. With regard to commercial firms, Mr. Reinecke, and by that I mean retail operations and things of that character, what is their connection with the firms who are engaged in the main business of Maui?

A. Well, a number of the retail establishments are owned outright by the agricultural firms, and the remainder have to buy most of their supplies either from local firms like—such as H. C. & S. or from one or other of the “big five” [19] or from Lewers & Cooke, which is connected with the “big five.” Furthermore, there is a rather widespread condition here in Hawaii in that small business men

(Testimony of John E. Reinecke.)

are stock holders in subsidiary firms of the "big five" or vice versa—that minor executives in the big firms go into small businesses on the side. I can point out one instance which has some bearing on this jury list.

Q. Would you do that please?

A. As I remember, a Mr. Elmore who is on the grand jury list is head of a firm called Valley Isle Motors. He is also on the Board of Directors of Maui Electric Company which, in turn, as I indicated before, is largely controlled by Alexander & Baldwin and, indirectly, through its sale of power by H. C. & S.

Q. One moment, Mr. Reinecke. I want to turn, Mr. Reinecke, to the question of the composition on a racial basis of people in different occupational activities on Maui. With respect to the groups exercising ownership and control, management, what is the racial origin of that group?

A. It is almost entirely caucasian, and within the caucasian race that group which is usually called "haole."

Q. What is meant by that term?

A. Strictly speaking, a haole is a caucasian—not of Portuguese, Spanish or Puerto Rican descent, but because of the predominant economic and social position of this [20] group, popularly it has come to mean a white person who occupies a relatively good position in the community. However, from my observations, a Portuguese who rises to an eminent

(Testimony of John E. Reinecke.)

position in the community is still, as a rule, regarded as a Portuguese.

Q. Now, with regard to the groups which are engaged in the employee or worker class, with regard to the main industrial and agricultural firms which you have mentioned, what is the racial origin and background of that particular group of people?

A. The bulk of them are of Filipino or Japanese descent, or in some cases, birth. There is also a considerable number of people of Portuguese descent, a number of Puerto Rican descent, some of more or less unmixed Hawaiian descent, and a considerable number of mixed Hawaiian descent, part Hawaiians. Some of these part Hawaiians are largely caucasian in blood and associate socially with the caucasians.

Q. With regard to the Chinese, are there any of that racial group employed on Maui?

A. Very few.

Q. Very few. Have you mentioned all the racial groups now with regard to those who make up the worker or employee class?

A. All those of importance on this Island.

Q. What would the percentage be of persons of that [21] racial origin among the working class or group?

A. Which one do you refer to?

Q. The non-caucasian groups that are employed as workers on plantations and mills.

A. I cannot answer that off hand, Mr. Resner.

(Testimony of John E. Reinecke.)

Frankly, there was a division of labor in collecting material on this between Mr. Oshima and myself.

Q. I understand that some of these things he is going to testify to, but there is a certain amount of overlapping.

A. I would rather that he would give the exact proportions.

Q. Mr. Reinecke, have you had occasion to chart the interlocking character of the ownership of the various industrial and agricultural firms in this particular county? That is, Maui?

A. I have not charted it. I have prepared some figures on it.

Q. Is there a chart that has been prepared to which you refer which you have used which shows the connection?

A. Among the local firms?

Q. Yes, among the local and other firms.

A. Well, I have here a list of the officers and directors of all or most of the firms to which I have referred.

Q. Could you give those to us?

A. I hope I won't be called upon to read this whole list. [22]

Q. Let me see the list. Perhaps we can save some time. May I take the list your Honor?

The Court: You are at liberty to do so.

(Witness handing counsel paper.)

Witness: In general, the list shows only what I have already pointed out—in that the Factors own large blocks of stock in agricultural companies that,

(Testimony of John E. Reinecke.)

in turn, own the subsidiary companies, and naturally this leads to a duplication of names on the lists of the boards of directors.

Q. Have you another copy of this with you?

A. This is the only copy.

Mr. Resner: If your Honor please, I would like to offer the list in evidence and to that extent avoid the reading of it. I will have copies made for counsel.

The Court: Have you shown it to opposite counsel?

Mr. Resner: I wanted to have the Clerk mark it first.

The Court: Better have counsel look at it first.

Mr. Resner: Very well. Every court has a different manner of proceeding. Some give it to the Court first.

The Court: We are accustomed down here to the courtesy to attorneys.

(Counsel showing paper to counsel for the prosecution.) [23]

Mr. Crockett: We object to the list as submitted as having no bearing to this particular case. It contains names of persons many of whom are not residents of Maui, I am sure, and one or two persons here who are dead. We submit, if the Court please, it has no bearing whatever upon any issue of this particular case.

Mr. Resner: It runs to the question, if your Honor please, of the economic character, the indus-

(Testimony of John E. Reinecke.)

trial character of Maui, which is one of the points which is pertinent according to the testimony in the field that—if your Honor cares, I will show your Honor the list.

Mr. Crockett: May I add further, if the Court please, I submit that the fact that there might be interlocking directorates or officers or persons serving in two or three corporations has no bearing whatever upon the issues of this particular case. If all the corporations were controlled or under the direction of one particular man, we submit has no bearing upon the issues of this case. The main question is to what extent the commissioners, in selecting men, have been influenced by any of the persons who may be members or officers of these particular corporations.

The Court: The Court can see no materiality at the present time. You may mark it for identification, and if it becomes pertinent later the question can be renewed. [24]

Mr. Resner: We would like the privilege of withdrawing it to make copies.

The Court: Mark it the Movants' Exhibit "A".

Mr. Resner: Mr. Reinecke, do you have a chart which shows the interlocking directorate of the firms that you have given us—the names on Maui with regard to other firms in the Territory?

A. I have a large chart. Unfortunately, I left that in my hotel room. It can be obtained.

(Testimony of John E. Reinecke.)

Q. Well, we will come back to that later, then. If your Honor please, may we have a brief recess.

The Court: We will take a five minute recess.

(The Circuit Court recessed at 10:04 a.m. and reconvened at 10:10 a.m.)

Mr. Resner: Mr. Reinecke, you have had occasion, have you, to go over the grand jury list in this case of the fifty people named on it?

A. I have.

Q. Now, with regard to the occupational characteristics and employment relationships of those fifty persons with the firms who dominate the economy of Maui, what is the result of your studies in that respect?

Mr. Crockett: If the Court please, I don't believe the list has been offered in evidence—or the list of jurors. So if counsel will first put that in, we will proceed. [25]

Mr. Resner: I assumed that the Court would take judicial notice of its own records.

The Court: The Court as such, but this Judge substituting needs a little information, Mr. Resner, in a practical way. Theoretically, they are before the Court; practically, they are not.

Mr. Crockett: Counsel has shown me a list, if the Court please, to which we object. It is not a certified list of the court record. I think the Clerk has already prepared a certified list.

The Court: Have you one there that you can show counsel?

(Testimony of John E. Reinecke.)

Mr. Crockett: Yes, sir.

(Counsel for the prosecution showing counsel for the Movants paper.)

Mr. Resner: Practically the same as our list, if your Honor please. Is there any particular virtue——?

The Court: If there is a certified copy and it is stipulated to by you.

Mr. Resner: The only point is that it has trial jurors, and we are not concerned with trial jurors in this——

The Court: I think we are, Mr. Resner, in view of the fact that the Jury Commissioners are required to pick out a complete list and out of that list to pick out a grand jury. To make the picture complete, the two have to be together under our statute. [26]

Mr. Crockett: And for the further reason, if the Court please, the fact is that the defendants have charged discrimination while we submit that the entire actions of the Jury Commissioners is the matter which is before the Court and not any particular section of their actions.

The Court: To resolve the question so that neither counsel will be responsible, the record may show that the Court has before it the certified copy of its own record which will be made a part of this record as Court's Exhibit 1. If there be any objection thereto, let's hear it.

Mr. Crockett: That is satisfactory.

(Testimony of John E. Reinecke.)

The Court: Mr. Clerk, if you will make it Court's Exhibit 1 as part of the official record of the court.

Mr. Resner: Now, Mr. Reinecke, will you answer the question.

Mr. Crockett: I object to that question, if the Court please, on the further ground that there is no ground shown that this witness is competent to form any opinion as to the occupation or anything else of the individual members of the grand jury. He has testified he is a school teacher in Honolulu and made certain financial studies concerning commercial economic conditions on Maui but there is nothing showing that he knows these persons individually or knows anything whatever about them. No proper foundation laid. [27]

Mr. Resner: If your Honor please the question hasn't been asked yet. Mr. Reinecke can't give the information until he proceeds to answer it. Counsel's objection is pointless in view of that situation. I have asked him to give us the material from where he got his information. Now, you can't prove your case all at once obviously. We expect to call all of the grand jurors and to demonstrate this conclusively to the Court, but at this point this is all that anyone could show.

The Court: What is the question, Miss Reporter, that you have?

Reporter (reading): "Now, with regard to the occupational characteristics and employment rela-

(Testimony of John E. Reinecke.)

tionships of those fifty persons with the firms who dominate the economy of Maui, what is the result of your studies in that respect?"

The Court: The objection is sustained. No foundation laid. Guessing here—only by a lot of hearsay, Mr. Resner. No foundation laid.

Mr. Resner: Mr. Reinecke, have you made some study with respect to the occupational characteristics of the members of the grand jury in this particular case?

Witness: I have. Although Mr. Oshima has done a great deal of the work, I have checked the information with him. The occupations of the persons who appear on the grand jury lists from 1942 to 1947, inclusive, were obtained first from residents of Maui County who have [28] personal acquaintance with these grand jurors, and about 85% of those names were checked against Polks' Hawaiian Directory for—I believe it is 1940 to 1941 the last one was published.

Q. What is Polks' Directory, Mr. Reinecke?

A. This is a standard directory of individuals and businesses in the Territory of Hawaii. Almost everyone of any consequence in the community appears in there, and a lot of people that are not of any consequence.

Q. Are listed in Polks' Directory?

A. Yes.

Q. Is there any other source of your information?

(Testimony of John E. Reinecke.)

A. The primary source was personal information from persons who knew these people.

Q. Checked?

A. Yes. This being a relatively small community, the persons known as to grand jury service in each precinct would be known to a number of people with whom we had contact, and we further checked about 85% of the names in Polks' Directory. It has to be understood that no directory has been issued since that one. Another will be issued next month, I understand, but during the war none was issued. However, it may be assumed that most of the people on the list have stayed in the same socio-economic class, although they may have risen somewhat in their positions they hold. [29]

Q. Now, with regard to your study as compared with the grand jury list in the instant case, what did the results of that comparison show?

A. Well, we took these firms which I have mentioned by name, the agricultural firms and their subsidiaries. I took also a number of other firms which are members of the Employers' Council of Hawaii. I will name them: Haleakala Motors, Limited; Hawaiian Air Lines, Limited; Consolidated Amusement Company, Limited; Maui Amusement Company; Maui Dry Goods and Grocery Company, Limited; Maui Soda and Ice Works; Mutual Telephone Company; Shell Oil Company, Limited; the Von Hamm Young Company, Limited; taking those firms and taking executives, owners in one

(Testimony of John E. Reinecke.)

case, and owners, managerial staff superintendents, foremen, and also clerical workers who are thrown into close contact with management—people like head cashiers and insurance salesmen—taking these all together, I find that from fifty-eight to seventy-two per cent of the persons drawn for grand jury panels come in this category.

Q. That is on the instant grand jury, Mr. Reinecke?

A. No, the figures are as follows: for 1947, 60%; 1946, 62%; 1945, 70%; 1944, 72%; 1943, 72%; 1942, 58%.

Q. What was the percentage again for the instant grand jury?

A. 60%. The remainder of the grand jury were either independent entrepreneurs or their salaried employees— [30] people such as public accountants, government employees, or occupations uncertain.

And then I made a third list of manual laborers.

Q. What did that show?

A. There, taking the years again, the second list, non-laborers who are not connected with these firms—1947, 24%; 1946, 32%; 1945, 22%; 1944, 16%; 1943, 16%; 1942, 24%.

Q. That is what again, Mr. Reinecke?

A. These are non-laborers.

Q. Non-laborers.

A. People who are not manual laborers and who are at the same time relatively independent of these dominant firms and other firms which belong to the

(Testimony of John E. Reinecke.)

Hawaiian Employers' Council. I might explain the Hawaiian Employers' Council includes virtually every firm of importance in Hawaii and a number of second-rank, a few of third. It very closely coordinates the labor relations and collective bargaining of all these firms.

Q. Now, Mr. Reinecke, with regard to the balance of the make-up of the grand jury panel, starting with 1947 and going back over the years, what are the figures with regard to the balance?

A. For 1947, 16%.

Q. Of what group now? These are all other groups?

A. Yes. I haven't broken this down to show where they [31] are employed, but they are manual laborers, skilled or unskilled. That includes cowboys, and one person who is listed as a band member—the Royal Hawaiian Band—though how he could be a member of that band and hold residence in Maui County, I don't know; and one or two people who are just called "unemployed." Again, 16% in 1947; 6% in 1946; 8% in 1945; 12% in 1944; 12% in 1943; and 18% in 1942.

Q. Now, with regard to the socio-economic composition of the population, with regard to positions held by these people, Mr. Reinecke, what does your study of the grand jury reveal in that connection?

A. That has been left to Mr. Oshima. I might say that so far as the socio-economic classification of the whole population of Hawaii—of the Territory—that I have gone into that.

(Testimony of John E. Reinecke.)

Q. Would you give us your information in that regard?

A. I think this probably—if the Court is willing for this to be—present this as an exhibit, that it would save a great deal of time. (Indicating.)

Q. May I see it, Mr. Reinecke?

(Witness handing to counsel.)

Witness: I have four copies of this, Mr. Resner.

(Counsel for the movants showing to counsel for the prosecution.)

Mr. Resner: I am going to offer this as an exhibit, [32] if your Honor please, and ask Mr. Reinecke to explain.

Mr. Crockett: If the Court please, we object first of all because it is—shows on its face it is based upon figures taken in the year 1940. This is 1947. Seven years old at the present time. And second, because the fact that the table which is proposed to be submitted is based upon some index. If it was based upon percentages, it would be a little more intelligible to persons of ordinary understanding, but in order to understand the index—I don't understand just exactly what it refers to—whether it refers to an index based upon percentages—

The Court: I take it this is something Territory-wide, Mr. Resner?

Mr. Resner: I assume so. Isn't that correct, Mr. Reinecke?

Witness: That is correct.

(Testimony of John E. Reinecke.)

Mr. Resner: From which you deduct that Maui being representative of the rest of the Territory, the situation is comparable here?

The Court: The Court can't see any materiality in extending this enquiry into the Territory at large. We are concerned with what the Jury Commissioners did in connection with the population of Maui.

Mr. Resner: I understand, your Honor. I wanted to direct your Honor's attention to what the Supreme [33] Court said in *Smith vs. Texas*, which was one of the questions involving the exclusion of negroes from the jury of one of the southern states and where it was held that an inquiry of this kind is proper.

The Court: The Court will listen to any inquiry into the matter concerning the population of Maui and qualifications in the selecting of jurors, but I am going to restrict you to Maui, please. I am not concerned with the rest of the Territory. The Jury Commissioners haven't coached under Mr. Reinecke for a course in sociology on the Territory, but to consider the population of Maui.

Mr. Resner: This is preliminary to that question.

The Court: The objection is sustained to the offer—that it has no bearing to the precise issues before the Court.

Mr. Resner: I should like to offer it for identification.

The Court: It will be marked Exhibit 2 for identification.

(Testimony of John E. Reinecke.)

Mr. Resner (handing to witness): Mr. Reinecke, with regard to the occupational make-up of the Island of Maui in connection with the various racial groups, can you give us that data?

Witness: Mr. Oshima has that data, I understand, so I would prefer to let him present it. I believe, [34] Mr. Resner, that the data will show a greater preponderance of caucasians in the top occupational groups on Maui or any other plantation of the county than in the Territory generally.

Q. What published works are there, Mr. Reinecke, that you used in part as source material on the basis of the racial composition and economic composition of Maui?

A. For Maui, the only thing available is the 1940 Census Reports.

Q. United States Census Reports?

A. United States Census Reports, and also the—some figures listed in the 1946 Statehood Hearings.

Q. Now, with regard to published works on the subject matter that you have been testifying to this morning, with regard to the socio-economic composition of the Territory and the economic structure, what published works have you gone into in that respect?

A. Well, the two basic works are these. (Indicating.)

Q. Could you tell us what they are, please?

A. One by James H. Shoemaker entitled, "Labor in the Territory of Hawaii 1939."

(Testimony of John E. Reinecke.)

Q. Who published that?

A. It says, "Bulletin No. 687, United States Department of Labor, Bureau of Labor Statistics."

Q. May I have it please?

(Witness handing to counsel.) [35]

Mr. Resner: If your Honor please, I am going to offer this volume into evidence.

(Counsel for the movants showing to the counsel for the prosecution.)

Mr. Crockett: Is counsel going to offer the whole volume into evidence or some particular portion?

Mr. Resner: The entire volume.

Mr. Crockett: We object to the whole volume. As the Court has already observed, the whole volume pertains to matter pertaining to the whole Territory and which is not pertinent here. I ask that counsel be asked to point out certain portions of the volume which is pertinent. The volume, he says, contains matters and reports and statements and articles and other matter of that nature which we submit is not material.

Mr. Resner: All I can tell, your Honor, is that this is an official publication of the United States Government, pertinent to the issues which are before the Court and we deem it material.

The Court: Counsel has asked you to point out any particular part of the book that has any bearing upon the action of the Jury Commissioners in this case.

(Testimony of John E. Reinecke.)

Mr. Resner: The whole volume is pertinent, if your Honor please.

The Court: The objection is sustained.

Mr. Resner: Let me ask you this question, Mr. Reinecke—with regard to Maui, is there any material [36] difference between the population—racial and economic make-up of Maui as compared to the other islands of the Territory?

Witness: In the County of Maui, as in the rural districts generally, there is a larger number of Filipinos, larger proportion of Filipinos, I should say, and persons of the caucasian race are very much more likely to hold preferred socio-economic positions.

Mr. Resner: If your Honor please, I am going to ask leave of Court to submit for identification at a later time so I can get a copy of this volume.

The Court: You may submit to be identified anything you like. As an exhibit, the objection is sustained until it appears that there is something material to the Jury Commissioners' action.

Mr. Resner: Very well. I merely want the record to show that I am asking leave at this time to offer it for identification as soon as I get the——

The Court: You will not be restricted.

Mr. Resner: Now, Mr. Reinecke, what other published works are there that you have used that are pertinent to the inquiry here, Mr. Reinecke?

Witness: There is a volume by Andrew W. Lind, professor of sociology at the University of Hawaii.

(Testimony of John E. Reinecke.)

Q. How do you spell that?

A. L-i-n-d—entitled “An Island Community”; copyright, [37] 1938 with the University of Chicago. The chapter on “Occupational Succession” is pertinent.

Q. What chapter is that? A. Chapter XI.

Q. May I have the book for a moment, please?

A. Particularly this quotation which I have marked here in pencil at the bottom of that page.

(Witness handing to counsel for Movants.)

Mr. Resner: I show the volume to Mr. Crockett, particularly page 255 of the book.

(Handing to counsel for the prosecution.)

Mr. Crockett: We object to that, if the Court please—oh, counsel hasn’t offered this in evidence. I withdraw the objection.

Mr. Resner: I offer the volume itself in evidence, if the Court please, and particularly pages 255 and 256 thereof.

Mr. Crockett: We object to the portions offered in evidence, if the Court please, first because the table there shown—the matter in support of the table or deductions from the table pertain to the Territory as a whole; and second, the table there shows that they are comparisons which go up to the year 1930, which is over 15 years ago—not pertinent to the issues in this case. [38]

The Court: The objection will be sustained.

Mr. Resner: I should like to offer it for identification, if the Court please.

(Testimony of John E. Reinecke.)

The Court: It may be marked with the next succeeding number.

Mr. Resner: I should like leave, however, to withdraw it and file a copy later with the Court so that the record may be complete in this regard. May I particularly point out the paragraphs referred to?

The Court: Paragraphs on page 258?

Mr. Resner: Pages 255 and 256.

The Court: The table that goes back to 1880?

Mr. Resner: No, it starts with 1902 and then it goes to 1915 and then to 1930.

The Court: I see. Since we are concerned with the actions of the Jury Commissioners in 1947 and there is no showing that they have any access to the book or are discriminative against the matters in the book as yet, the objection is sustained.

Mr. Resner: Has there been any appreciable change in the racial composition of Maui in the last fifteen years, Mr. Reinecke?

Witness: I can't say as to the last fifteen years. There has been, so far as I know, no appreciable change in the past seven years.

Q. Is that true of the economic composition of the county as well as the racial composition? [39]

A. That is true, because the economy of the outer islands is pretty stable.

Mr. Resner: For the record, if your Honor please, I assume that Mr. Shoemaker's volume published by the government is 3 for identification and Mr. Lind's will be 4 for identification.

(Testimony of John E. Reinecke.)

The Court: Reserve any numbers in any sequence you desire.

Mr. Resner: Very well. Now, Mr. Reinecke, is there another published documental written work that you used as a source material here?

A. There is one which I used in the past which I do not have with me to present. This is Gilmore's Sugar Manual. The title is "Hawaii Sugar Manual for 1939." This lists the stable personnel of thirty-four of the sugar plantations. These positions, of course, differ from plantation to plantation depending upon what the management thought was important. But taking them one by another, there were 552 names listed of men who held positions from water luna up to manager, and 91% of these, roughly 501 to be exact, 501 individuals or about 91% bore haole names. It doesn't follow in every case that they were of unmixed caucasian blood. Some of them were probably part Hawaiian. As I do not have that here, I don't know the proportions on the four sugar plantations on this Island. However, I do know there has been [40] no appreciable change in the racial composition of the management of those plantations.

Mr. Crockett: Just a minute. I ask that the last statement of the witness be stricken as having no bearing whatsoever upon the issues of this case, too remote, and for the reason that it covers Territory-wide in its scope and is not limited to the conditions existing on the Island of Maui.

(Testimony of John E. Reinecke.)

The Court: Which particular part are you objecting your motion to? I don't identify it.

Mr. Crockett: The witness was identifying the statement taken from a work which he stated was Gilmore's Hawaiian Sugar Manual, dated 1939, in which he stated are a lot of names and various other matters there showing the percentage of races and things of that nature.

The Court: The motion to strike will be granted. I think we had better get down to 1947—the actions of the Jury Commissioners.

Mr. Resner: May I explain to the Court the basis upon which we show this to the Court.

The Court: I think I am quite aware of your basis, Mr. Resner, but I still insist that I am concerned only with the actions of the Jury Commissioners that you challenged for the 1947 jury list.

Mr. Resner: Now, Mr. Reinecke, are there any other [41] published or written works that you have used as source material.

Witness: I have used a copy of the Doctor's dissertation entitled, "The Hawaiian Sugar Industry" by William H. Taylor, presented in the economics department of the University of California.

Mr. Crockett: If the Court please, might I interrupt the witness. In order to save time for the Court, may I ask that the witness be instructed to state to the Court, first, whether or not the matter about which he is going to testify is pertaining to the year 1947; and second, whether or not it is Ter-

(Testimony of John E. Reinecke.)

ritorial-wide in its scope or covers the County of Maui—to save us time and not encumber the record with a lot of material and then have to have an objection and have it stricken.

The Court: He is just reading the title, Mr. Crockett. Let's proceed. Have you finished with the title?

Witness: This was deposited in the University library, May 1935, which answers the first part of your question, Mr. Crockett. As to the second part, there are some references specifically to the County of Maui.

The Court: In May, 1935?

Witness: That is correct, your Honor. [42]

Mr. Crockett: We object to any evidence concerning the records of the County of Maui made in 1935, if the Court please.

The Court: This hasn't been offered, Mr. Crockett, but it characterizes the evidence of the witness.

Mr. Crockett: The reason I made the objection at this time, if the Court please, was because when the witness referred to the other one, he proceeded to give a lot of detail which was not pertinent and I thought it would save time by having him instructed to lay a proper foundation first.

Mr. Resner: Mr. Reinecke, one of the points of the challenge here before the Court is the requirement of the statute that the grand jury understandably speak and read and write the English language.

(Testimony of John E. Reinecke.)

Now, with regard to the population of the Island of Maui, can you give us information concerning the average understanding of the citizens of the county?

Witness: I have not resided in this county. I have traveled here. I have resided in country districts. I have taught in country districts which were no different appreciably from Maui. I should say that practically all of the persons who are born and reared in Hawaii and have attended our public school system at least four years can speak and understand English well enough for practical purposes. Their mastery of written English depends on their general intellectual ability. [43] I have known graduates of high school of the twelfth grade who cannot read English understandably. I have also known persons with less than an eighth grade education who can read it and write it quite understandably and forcefully.

Mr. Resner: If your Honor please, there is only one other thing that I wanted to bring in to Mr. Reinecke, and that is this chart which has been left, and we ask leave of the Court to produce that later this morning or early this afternoon. This is all I have now.

The Court: Does counsel desire to cross examine at this stage or wait?

Mr. Crockett: We are willing to proceed, if the Court please, and allow counsel to introduce his chart later.

(Testimony of John E. Reinecke.)

Cross Examination

By Mr. Crockett:

Q. Mr. Reinecke, I understand that you went through the jury list to determine the occupations of the various persons named on the list.

Witness: That is correct.

Q. Which list did you take into consideration—the grand jury list or the trial jury list?

A. Grand jury list.

Q. You considered the trial jury lists?

A. I did not.

Q. So your figures are based entirely upon the question [44] of the grand jury list alone?

A. That is correct.

Q. The first figure you gave for 1947 was 60%—and what class did you say that that comprised?

A. That comprised what one might call non-laborers from firms which were members of the Hawaiian Employers' Council or which occupied a dominant position in Maui economy or both.

Q. And in that list of firms, I believe you included corporations like the Maui Dry Goods?

A. I did, yes.

Q. And what other firms did you include there other than what you call the "big five" dominant firms?

A. Would you like a complete list for that?

Q. Just the list on Maui that you included in your study.

(Testimony of John E. Reinecke.)

A. That is what I mean—on Maui?

Q. The list that you included.

A. That is what I am referring to. Is that what you want?

Q. Yes, the ones on Maui that you included in your list.

A. Okey. These are the ones from which grand jurors were drawn: Hawaiian Pineapple Company, Limited; American Can Company; Baldwin Packers, Limited; Bank of Hawaii; Bishop National Bank of Hawaii; Haleakala [45] Motors, Limited; Haleakala Ranch Company; Hawaiian Air Lines, Limited; Hawaiian Commercial & Sugar Company, Limited; California Packing Corporation; Consolidated Amusement Company, Limited; Kahului Railroad Company; Lahaina Ice Company, Limited, a subsidiary of Pioneer Mill; Libby, McNeill & Libby; Maui Amusement Company; Maui Dry Goods and Grocery Company, Limited; Maui Agricultural Company, Limited; Maui Electric Company, Limited; Maui Pineapple Company, Limited; Maui Publishing Company, Limited; Maui Soda & Ice Works; Mutual Telephone Company; Pioneer Mill Company, Limited; Shell Oil Company, Limited; the Von Hamm Young Company, Limited; Wailuku Sugar Company; East Mauri Irrigation Company, Limited; Ulupalakua Ranch; and Hana Ranch Hotel and its predecessor.

Q. That also includes what you term the “big five” corporations?

(Testimony of John E. Reinecke.)

A. It does, and also a few local firms which are not directly connected with the "big five", but are members of the Hawaiian Employers' Council.

Q. Then you gave us a figure of 24%. What did that figure include?

A. Those were—24% came from—included entrepreneurs who were not members of the Hawaiian Employers' Council, their salaried employees, such a person as a public accountant, [46] a few government employees, and a few persons whose occupations was uncertain. I don't know whether that would apply for 1947 alone. These in this category—the classes that come in this category were for the whole six years, and whether all those are found in 1947, I can't say without going back over it. I can't say that all of those occupations such as government employees can be found in 1947 as well as in other years.

Q. You mean you did not make any separate computation or calculation of those on the 1947 list?

A. That is available, yes. But this on this table, there is no separate computation.

Q. You mean the 24% is the average for the six years?

A. No, it is not. That is for 1947 alone. The percentage differed from year to year. Perhaps I didn't make myself clear. The sort of person who is included on this list might be found, say, in 1946. He might be found in 1947. I don't know which

(Testimony of John E. Reinecke.)

year the public accountant appears in, but he is the sort of person who would be in the non-laborers not connected with dominant firms.

Q. But the 24%, you say, that is the 1947 percentage?

A. That is for 1947, yes.

Q. Then you gave us 16%. And what class does that include? [47]

A. That includes manual laborers.

Q. And can't you break that down in any more detail? That is, what kind of manual labor?

A. There again, without referring to the lists, I can't say whether these would all appear in 1947, but cowboys, agricultural labor and miscellaneous labor, both skilled and unskilled.

Q. Did you find any locomotive operators on that list?

A. I can't say without referring to the list off hand; however, locomotive operator—if he appears—would be classed as laborer.

Q. That is within the 16%?

A. Within the 16% if he was in 1947.

Q. Did you try to determine by whom these laborers, as you call them, were employed?

A. In most cases, yes.

Q. By whom were they employed in most cases?

A. By these large firms—what I have called the dominant firms.

Q. And also some by the sub-dominant firms

(Testimony of John E. Reinecke.)

associated, as you call it, with the Hawaii Employers' Association?

A. As I remember, yes.

Q. So that the 60% plus the 16% are practically all persons who are employed employees by the same firms?

A. I don't know—yes, I should say off hand. Again, I should have to refer to the lists to be absolutely sure of that. [48]

Q. So that your study does definitely show that the labor class was included on the Grand Jury list not only for 1947, but for the six years immediately prior thereto.

A. It was included in proportions from 6%—

Q. I didn't ask you proportions. I asked—they were included. Is that correct?

A. They were included.

Mr. Crockett: If the Court please, might I ask that the witness, while getting his chart, since he has not made a study of the Trial Jury list, that he be asked to make a study of the Trial Jury list so that the Court will have the benefit of his expert testimony as to the composition of the Trial Jury list also for the year 1947.

The Court: Are you making him your witness, Mr. Crockett?

Mr. Crockett: To that extent, if the Court please.

The Court: I can't compel the witness to make a study.

Mr. Crockett: We withdraw the request. We have nothing further, if the Court please.

(Testimony of John E. Reinecke.)

Examination by the Court

The Court: I would like to ask one question, perhaps, subject to objection of Counsel. Did you make a study of any of the jury list of 1947 as to how many democrats and how many republicans were on it?

Witness: That is impossible to determine except on the basis of rumor. If a person is markedly active on behalf of the republican or democratic party, that would be known in the community.

The Court: So you didn't make any study?

Witness: Since we don't have registration in the primaries here by party, I did not make any such study.

Mr. Resner: As I understand it, your Honor, it is impossible to get that information because you have no way of determining the person's affiliation according to party.

The Court: I don't know whether it is possible or impossible. A good party precinct has pretty good possibilities. However, I am not pressing it. I am just asking the limit of the field.

Mr. Resner: We sought that information, but because of the difficulties attendant, it was not possible.

The Court: Mr. Reinecke, did you examine existing lists of questionnaires that went out to prospective jurors from which the list was ultimately selected?

Witness: I did not examine it, your Honor.

(Testimony of John E. Reinecke.)

The Court: You didn't examine it at all?

Witness: No, sir.

The Court: To determine whether on that list appeared the employment factor? And on the list appeared [50] the understanding of English factor?

The Witness: I did not examine.

Mr. Resner: If your Honor please, may I ask the Court if your Honor's attention is directed to the grand jury or the petit jury.

The Court: Both, because the statute requires that the list be selected—a certain number of names for the jury out of which names a certain proportion be set aside for the grand jury, as I understand it. I don't remember off hand the number sitting in this division, so that I will have to refer to the statute.

Mr. Crockett: The number is 50 for the grand jury and 100 for the trial jury.

Mr. Resner: Section 9800 of the Revised Laws of Hawaii, 1945, states that: "The jury commission of each circuit shall in each year make and file with the clerk of the circuit court at least ten days before the next term of court two certified, separate lists of citizens to serve respectively as grand and trial jurors in the circuit court for the ensuing year. It shall select and list the names of one hundred citizens as trial jurors and fifty citizens as grand jurors."

The Court: Yes.

(Testimony of John E. Reinecke.)

Mr. Resner: And I see nothing, your Honor, that the fifty come from the one hundred.

The Court: No, they don't come from the one hundred, but from the questionnaires sent out. Perhaps [51] you haven't the background of the Court and the Jury Commission to get the start on this process.

Mr. Resner: Perhaps not, but I understand from your Honor's question that the inference was that the larger list contained the smaller, and as we understand it, the Jury Commission and the Court have the duty of providing two separate, distinct lists.

The Court: To that extent you are correct, Mr. Resner. The Court's question right to the witness was did he examine the total questionnaires sent out from which the Jury Commission did go through in making a selection of the one hundred and fifty respectively.

Witness: No, I examined neither of them.

Mr. Resner: Mr. Reinecke, I have no questions at this time, but would you get the chart to which you referred and return with it.

The Court: The cross-examination is finished at this point?

Mr. Crockett: I have no further cross-examination.

The Court: We will take another five-minute recess.

(The Circuit Court recessed at 11:01 a.m.)

(The Circuit Court reconvened at 11:08 a.m.)

HARRY TATSUMI OSHIMA

having been first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Resner:

Clerk: Will you please state your name?

Witness: Harry Tatsumi Oshima.

Mr. Resner: Your name is Harry Oshima?

A. Harry Tatsumi Oshima.

Q. And where do you live?

A. At the present time I live at 1450 Alencastre, but this is just my temporary address.

Q. What is your permanent address?

A. Washington, D. C.—American University.

Q. American University, District of Columbia?

A. That's right.

Q. What is your profession or occupation, Mr. Oshima?

A. I am an economist dealing with statistical research.

Q. You are an economist and statistician?

A. Yes.

Q. Would you speak up loud enough? Now, what education have you had?

A. I finished at the University of Hawaii.

Q. What year? [53]

A. 1940, with a Bachelor of Arts.

Q. In what particular field of work did you specialize? A. Economics and statistics.

Q. Economics and statistics.

(Testimony of Harry Tatsumi Oshima.)

A. And then I went to the Columbia graduate school studying also economics and statistics.

Q. Columbia University, New York City?

A. Yes.

Q. How many years did you spend there?

A. I was there for about three years—three semester years up there.

Q. Doing work in economics and statistics?

A. That's right.

Q. Yes, what did you do next?

A. Then I took a job, a position with the National Bureau of Economic Research.

Q. What is the National Bureau of Economic Research?

A. It is one of the leading economic statistical bureaus in the country. It is located in New York City, Columbus Circle.

Q. What kind of economic research work does that organization do?

A. It is an organization doing research, which is mainly doing research of a scholarly sort—mainly problems that concern the leading graduate economic faculties—so the main work is statistical. [54]

Q. And they furnish their service to different American universities?

A. No, the scholars of different universities like Columbia, Harvard, Chicago and other leading universities support this.

Q. What kind of work did you do there, Mr. Oshima?

(Testimony of Harry Tatsumi Oshima.)

A. There I was a research assistant to Professor Morganstein of Princeton University. I was doing there statistical work on foreign exchange rates, trying to determine how depressions and prosperity come alternately throughout the world.

Q. And how long did you stay with the Bureau?

A. I was there a little bit over a year.

Q. What did you do next after that?

A. Then I took a job in Washington, D. C., with the Office of Strategic Services, and was there during the war years. That was a part of the United States army. That was a sort of semi-military sort of agency.

Q. You worked there as a civilian?

A. Yes.

Q. How long were you associated with the Office of Strategic Services?

A. About a year and a half.

Q. What did you do there, Mr. Oshima?

A. There I did a study into the population and national income statistics of Japan. There I calculated, or rather estimated the national income of Japan, number of people [55] employed and so forth and so on, which were facts needed for the war effort.

Q. I see. That was statistical research and economic work?

A. Mainly based upon population trends and characteristics.

Q. That was statistical research and economic work, is that correct? A. Yes.

(Testimony of Harry Tatsumi Oshima.)

Q. And what did you do after your service with OSS?

A. Then I came back for another year of graduate work at Columbia University—sort of a refresher—and there I took further courses, finished up all my other requirements for my doctorate. And then I took a job as an assistant professor of economics at the American University.

Q. And that is where you are now?

A. Yes.

Q. Is that your present position? A. Yes.

Q. Assistant professor of economics at the American University? A. Yes.

Q. What do you teach?

A. The past year I taught a course in general statistics, a course in money and banking, economic theory, and a course in economic history.

Q. Does that cover it? [56]

A. Couple of courses which are not listed but are senior on this work and junior on this work—semi classes, quasi-classes.

Q. Now, Mr. Oshima, have you written for publications?

A. Yes, I have written an article in "Pacific Affairs," which is a quarterly journal of the Institute of Pacific Relations—an article on Japan's economic structure which was partially a statistical study of the trends in Japanese economic categories.

Q. When was that published?

(Testimony of Harry Tatsumi Oshima.)

A. I am not absolutely certain of these dates—1942.

Q. What other works have you published?

A. I think that was a spring issue of the quarterly journal. Also in "Social Research"—another quarterly journal this time of the new School of Social Research in New York City. I published in 1944, I think, an article on "Veblen in Japan."

Q. What other published works have you done, Mr. Oshima?

A. Then there was an article, a co-author job in a book by Steiner, whose initials I have forgotten—"Economic Problems of War"; the book was published in 1941 or 1942.

Q. Were you co-author with some other person of that article, Mr. Oshima, or was this your own work?

A. That was a co-author job.

Q. And who was associated with you?

A. Robert A. Brady.

Q. That is Professor Brady of the University of California? [57]

A. And of Columbia formerly. And also my work in the Office of Strategic Services resulted in a publication by the State Department, together with OSS. The OSS went out of existence at the time when I terminated my job. It was really printed—published under the authorship of the State Department—"National Income of Japan, 1930 to 1944."

Q. Now, in connection with the present case be-

(Testimony of Harry Tatsumi Oshima.)

fore the Court here, Mr. Oshima, and the economic, social, racial makeup of the Maui Grand Jury for 1947, have you had occasion to make a survey of that and to prepare some statistical tables and data? A. Yes.

Q. What sources did you use for the preparation of your tables and testimony here, Mr. Oshima?

A. First of all, the United States Census—Population.

Q. When was that census published?

A. I think it was published in 1941, but it is of 1940.

Q. Has there been any census report by the United States government since that time?

A. No.

Q. How often does the census take——?

A. Every ten years.

Q. That is every ten years on the even number of year—1930, 1940, 1950 and so on, is that correct? A. Yes.

Q. So the next United States census will occur in the year 1950? [58] A. That's right.

Q. This census report to which you refer is not only of the United States generally, but includes the Territory of Hawaii and the Islands of Maui, Molokai and Lanai, is that right?

A. That's right.

Q. With regard to statistical methods, Mr. Oshima, and assuming that you have figures taken by the Census in 1940, what is the validity of those figures with regard to the year 1947?

(Testimony of Harry Tatsumi Oshima.)

A. Well, they are the best one can get considering every source you can possibly put your hands on, and I would say that the estimates that I have made, generally speaking, will not have an error larger than plus or minus five per cent.

Q. That is between 1940 and 1947?

A. Well, the estimates I have made for 1947 in many cases will be based on 1940. Of course, the method of estimation will be dependent upon a great deal of other sources.

Q. But first I am getting to this question of margin of error plus or minus five per cent for the years 1940 and 1947. Do I understand your testimony to be that based on the 1947—1940 census and carrying it to 1947, the records and figures would be the same with a possible five per cent error based upon changes in that intervening seven-year period? Is that right?

A. Yes. [59]

Q. Is that accepted in statistical work of the character that you have been doing?

A. Yes. Statistics is mainly an effort to estimate from what is known to what is unknown because the whole problem in statistics revolves around that procedure of estimating on whatever basis of the sources you have, and this sort of thing I have done here and general estimate work in the field of statistical estimation.

Q. Besides the census, what other sources have you used?

A. Census of Agriculture.

Q. Whose publication is that?

(Testimony of Harry Tatsumi Oshima.)

A. The United States Bureau of the Census.

Q. When was that published?

A. That was published in 1940.

Q. Is that the last such census?

A. To my knowledge, yes.

Q. Do you know when the next is scheduled to occur?

A. I think about the time when the decennial population will be held.

Q. What is the Census of Agriculture?

A. The Census of Agriculture makes an attempt to deal with the characteristics of the—of Hawaiian agriculture, take—how many people employed, to what extent machines are used, what is the status of the different individuals in the Census of Agriculture—whether they are attendants, owners, part owners, [60] employees—what is the average acreage of the individual ownership of farms and so forth.

Q. Is the Census of Agriculture of the United States broken down not only to the Territory of Hawaii, but also to the Islands of Maui, Molokai and Lanai?

A. That's right.

Q. And would you say that the same rule with regard to the margin of error applies to the Census of Agriculture in 1947 as compared with the 1940 general population census?

A. Perhaps less.

Q. Why less?

A. Because the Census of Agriculture deals a great deal with non population matters, financial

(Testimony of Harry Tatsumi Oshima.)

matters, for example, for which there are a great deal of—there is a great deal of statistical sources such as the Hawaiian Stock Exchange Manual. You have a great deal of statistics by the Hawaiian government—City and County government on the various financial situations on Maui so that you can feel that your estimates made on the 1940 Census of Agriculture will have a great deal of confidence for 1947.

Q. What other sources did you use, Mr. Oshima?

A. Census of Business.

Q. Census of Business?

A. In Hawaii, Alaska and Puerto Rico. [61]

Q. And is that a government census, too? A United States government census?

A. United States Bureau.

Q. United States Bureau of the Census?

A. That's right.

Q. That is part of the Department of Commerce?

A. That is right. That is part of the Department of Commerce. The Bureau is a part of the Department of Commerce.

Q. All these things you have been talking about are government activities? That is, activities of the United States government?

A. Activities of the United States government which are authorized by the Congress. Every ten years, Congress will appropriate money to set out detailed regulations as to how the census will be conducted.

(Testimony of Harry Tatsumi Oshima.)

Q. The Census of Business was taken for what year? 1940 also? A. 1939.

Q. Is that the last such census? A. Yes.

Q. Do you know when the next is scheduled to occur?

A. About the same time, perhaps, but you see a great deal of these things have to be acted upon by Congress. I can be fairly certain that the United States population census will be conducted for 1950 because that is something that has occurred every ten years in the past. But the Census of Agriculture and Census of Business [62] require a special appropriation. In the past some years, there were no appropriations set aside.

Q. So it may occur in 1950, but it may not?

A. Yes.

Q. And the last such census anyone can use is 1939—for the Census of Business? A. Yes.

Q. Is that right? A. Yes.

Q. What would be the margin of error, if any, between 1939 and 1947 on the Census of Business?

A. Roughly five per cent, too, I think, depending upon the methods used.

Q. And is your estimate of the degree of error of five per cent based upon the same factors whereby you would make an estimate of error of the other two kinds of census you have been using?

A. Yes. I want to point out the stability of the statistical scene. Since I don't know too much about Maui, by the statistical scene, I was convinced that

(Testimony of Harry Tatsumi Oshima.)

the Maui population factors have been relatively stable; that is, the Board of Health is the best estimate for total population for 1947. Just about a few weeks ago, the head of the Board of Health in his report to the governor showed that there was a large increase in Honolulu, but for Maui there was practically no change as far as the population data went, and it indicates—the percentages indicate a change of only [63] about one per cent in the population, to the population of Maui from 1940 to 1947, which is a fairly good evidence of the relative stability of the situation on Maui. I also called up the individual who worked on these estimates for the Board of Health, and he stated that he felt there was a great deal of stability on Maui and the outside islands.

Q. That is stability of the population of Maui, Lanai and Molokai—is that what you are saying?

A. Yes.

Q. A stability going back over a period of some years?

A. To 1940.

Q. To 1940?

A. Yes.

Q. What other sources—oh, I didn't mean to cut you off.

A. I was going to say that a great deal of these estimates for 1947, 1946 the Board of Health and and other governmental departments are based on the 1947 census.

Q. Is it common for government agencies today such as the local government, the Maui government, to use the census to which you referred as the basis for current estimates?

(Testimony of Harry Tatsumi Oshima.)

A. All valid current estimates must be based on the census.

Q. That is what has been done in all of them?

A. Yes, the Territorial Board of Health.

Q. For 1947? [64] A. Yes.

Q. What other sources did you use, Mr. Oshima?

A. The directory—Polk's Directory of the Territory of Hawaii—excuse me—the directory of the City of Honolulu and the Territory of Hawaii, 1940 to 1941, 1939 to 1940.

Q. Are those the last two such directories published? A. Yes.

Q. And what is Polk's Directory, Mr. Oshima?

A. It is a directory which attempts to give information on the economic status of individuals—as many individuals as they can of the Territory—of the individuals of the Territory of Hawaii. I found that for those individuals who are well known, the Directory is fairly complete although for individuals who are, say, the laboring class, the Directory is not very complete.

Q. Does that Directory include the population of Maui, Lanai and Molokai?

A. Yes. No, there is a separate section on Maui, Molokai, Lanai—Lanai and Molokai.

Q. You had reference to that section in making your statistical reports and tables, is that correct? A. That's right.

Q. And you also used the Grand Jury list for 1947, did you, Mr. Oshima? A. Yes. [65]

(Testimony of Harry Tatsumi Oshima.)

Q. And the Grand Jury lists also for the years 1946, 1945, 1944, 1943 and 1942?

A. That's right.

Q. And the occupational status or position held by the Grand Jurors for 1947 and on back to 1942 as revealed by Polk's Directory? A. Yes.

Q. Is that correct? A. That's right.

Q. And the Grand Jury are identified, are they, by both name and address on the lists in the——?

A. ——No. You mean in the Directory?

Q. Name and address appears in the Directory, does it not? A. That's right.

Q. And their names only appear on the lists—or addresses, too? The Grand Jury lists I am referring to now? A. Yes, both appear.

Q. Now, the first thing I want to direct your attention to, Mr. Oshima, is Table 1. Will you please get out Table 1? Would you hand me the original copy and keep a copy for yourself?

(Witness handing paper to Counsel for Movants.)

Mr. Resner: If your Honor please, I have shown this to Counsel and we have sufficient copies. You made six copies of these, did you, Mr. Oshima?

Witness: Yes. [66]

Mr. Resner: I should like to offer at this point, Table 1 for identification as Defendants' next in order.

The Court: It will be marked for identification with the next numeral.

(Testimony of Harry Tatsumi Oshima.)

Mr. Resner: Number——?

Deputy Clerk: No. 3.

Mr. Resner: No. 3? 3 and 4 have been saved for the two volumes. This would be 5.

Deputy Clerk: Oh.

Mr. Resner: Would you tell us what—you better give me another copy of Table 1, Mr. Oshima. Now, what is Table 1, Mr. Oshima, which is Defendants' 5 for identification—for the record?

A. Table 1 is the distribution of caucasians and non-caucasians in the population and Grand Jury panel of Maui County.

Q. And is this based upon the statistical sources that you have just mentioned for us? A. Yes.

Mr. Resner: All right, now, if the Court please, I should like to offer Table 1 in evidence and I will ask Mr. Oshima to explain.

Mr. Crockett: We have no objection, if the Court please.

The Court: It may be received with the same number, Exhibit 5. [67]

Mr. Resner: If your Honor please, it may be helpful if your Honor would follow the Table 1.

The Court: As soon as he gets it marked, he will pass it up to me.

Mr. Resner: Very well. Mr. Oshima, first I want to ask you this—on the left hand side of this sheet of paper, Table 1, are noted the figures 1, 2, 3, 4, 5, 6 and 7. Those refer, do they, to the footnotes and therefore the sources which appear on the following page.

(Testimony of Harry Tatsumi Oshima.)

Witness: That's right.

Q. Are there two pages of footnotes to Table 1?

A. Yes.

Q. We haven't got the last page. I think your Honor's page has only one page of footnotes.

The Court: Run to footnote No. 5.

Mr. Resner: Yes, they run to footnote 6 and 7 there.

(Witness handing paper to Counsel for Movants.)

Mr. Resner: I think, your Honor, we might save time by getting them at the noon recess.

Well, let's go back to this Table 1. Mr. Oshima, would you explain what Table 1 demonstrates?

Witness: The purpose of Table 1 is to make a separation of caucasians and non-caucasians in the population of Maui, first of all; and secondly, to make a separation, similar separation for the Grand [68] Jury panel members. Now, in order that the absolute numbers can be more easily grasped, the percentages are calculated and these percentages are comparable with the parallel percentages in the lower part of the table for the panel for the various years. In the first half of the table, footnote No. 1, male and female, this is a total number of males and females in Maui County in 1940, and—oh, first of all, the definitions of caucasian and non-caucasian are taken directly from the census.

Q. What does the census say in that regard?

A. The census includes with what is popularly

(Testimony of Harry Tatsuni Oshina.)

known as "haole", Portuguese and Spanish, and will for the relevant purpose for Maui County, and all the rest on the caucasian side, Spanish, French, Irish and most of the European countries. And the non-caucasians would include the Oriental people. It would include the Puerto Ricans, Filipinos, Hawaiians, part Hawaiians, Koreans, Japanese——

Q. Chinese?

A. Chinese, negroes—non-caucasian.

Q. And any Island group such as Samoan?

A. That would be included in non-caucasian.

Q. The first top of your table then which is a breakdown both with regard to total number and percentages as they are interposed into percentages of the caucasian and non-caucasian elements of the population of Maui, is that correct? [69]

A. Yes.

Q. Now, going down the list, I see that on Maui the total male and female amounts to 12.5 being caucasian and 87.5 being non-caucasian, is that correct?

A. That's right.

Q. In other words, there are 6,989 caucasians and 48,991 non-caucasians—a total of 55,980 persons resident on Maui, is that right?

A. That's right.

Q. And then the next figure shows the male population over the age of 21 years, is that correct?

A. Yes.

Q. Demonstrating that in 1940 the caucasian male group of Maui was 11.2 and the non-caucasian was 88.8, is that correct?

A. Yes.

(Testimony of Harry Tatsumi Oshima.)

Q. And next it shows that in the year 1947, the males between the ages of 21 to 60 years amounts to the same figures—that is, 11.2 caucasian and 88.8 non-caucasian. Is that right?

A. Percentages are the same, yes.

Q. Percentages are the same, but the numbers are different. In 1940 there were 2,027 caucasian males, 21 years and over. In 1947, there were 2,208 males, 21 to 60 years—is that correct?

A. Yes. [70]

Q. And in 1940, there were 16,038 non-caucasian males as against 15,517 non-caucasian males, 21 to 60 years, is that correct? A. Yes.

Q. And the male population, 21 years and over, in 1940 totaled 18,065; and in 1947, the male population, 21 to 60 years, totaling 19,725. Is that right?

A. Yes.

Q. Now, the series of 2 and 3, what source is that that you computed on as shown by your footnotes, Mr. Oshima?

A. First of all, the second—the first footnote—first and second footnote indicate that these figures were taken directly from the 1940 Census. Footnote 3 is obtained on the basis of the same. “Second Series, Characteristics of the Population of Hawaii”, is the name of the volume. With this difference—seven years—since from 1940 to 1947, there was a seven-year discrepancy, to each class interval on this Table 19 of the population census volume, seven years was added. To each of the class inter-

(Testimony of Harry Tatsumi Oshima.)

vals in the table referred to in the Census, seven years was added, which would give you a fairly accurate estimate of the males, 21 to 60 years, in 1947.

Q. On the Island of Maui?

A. Yes, I am speaking of Maui.

Q. And when we use the term, Maui, here, we refer to all the three islands that make up the County? [71]

A. Yes, I refer to the County.

Q. Next, we come to the question of male citizens. Is the next figure with regard to male citizens the situation which existed in what year, Mr. Oshima?

A. These are estimates brought up to 1947.

Q. Estimates brought up to 1947—so that that shows that citizens between the ages of 21 and 60 years of the male sex in 1947 amounts to 2,074 caucasian or 16.2%; and there are 10,747 non-caucasians or 83.8%—a total of 12,821.

A. 12,821.

Q. 12,821—is that correct? A. Yes.

Q. And the source for that is what? How did you arrive at that figure?

A. Footnote 4, which attempts to make a correction of citizenship. This estimate again is based upon the Census, Second Series, 16th Annual, Table 18, Page 27. Shall I indicate the method there?

Q. Yes, I want you to explain.

A. Total caucasian non-citizens outside of Honolulu is equal to 498. This is information given in

(Testimony of Harry Tatsumi Oshima.)

the Census, page 28. Total non-citizens outside of Honolulu, total 16,078. By these two totals, I get a ratio which is 3%—a ratio indicating the proportion of caucasian non-citizens outside of Honolulu. All this is for 1940 yet. Now, the ratio I will use a moment later. [72] In the next line—number of non-citizens, male, 21 years and over in 1940—from the table is equal to 3,941. Now Filipinos are included in the group in the Census which has a category, “native-born”. A “native-born” is taken as equivalent to citizen, but of course the United States Census in 1940 made it a practice of including Filipinos as “native-born” since the Philippines were part of the United States. So in order to get the total citizenship, you will have to deduct the total number of Filipinos who may be “native-born” according to the United States Census definition, but who are not citizens. So I add 6,550, which will give you a total of non-citizens in 1940 of about 10,491. 10,491 multiplied by 3% will give you about 315 caucasians who are non-citizen; minus 315 from 10,491 will give you 10,176 non-caucasians.

Now, we take the 2,208 from note 3, caucasian, and deduct the number of non-citizens and we get 1,893 as the number of caucasian citizens. Deduct 10,176 from 17,517, taken from note 3 of Table 1, and we get 7,341 non-caucasian citizens. Now, we apply a correction to bring this up to 1947 and this correction is in general contained in note 3. This correction note 3—all of the numbers to be added,

(Testimony of Harry Tatsumi Oshima.)

the number to be deducted under note 3 will be the individuals who have reached in 1947 21 years and who have gone beyond 60 years, which is the criterion, I take, for—— [73]

Q. Grand Jury duty.

A. Yes. Sixty years—in excess of 60 years—or, I take it in excess is not qualified for Grand Jury.

Q. Yes, you are taking male citizens between the years of 21 and 60 years?

A. Yes. So I make that correction on the basis of using the data in footnote 3 of Table 1. Deducting also—since a great number of people who grew old, beyond 60 years old, in the non-caucasian group are Japanese and Filipinos—these older Japanese and Filipinos assumed to be non-citizen in 1947—that is, sixty and over, 1,927, according to the Census—this total is subtracted from the correction as applied in footnote 3.

Q. And that brings you out with your number of citizens of both caucasian and non-caucasian origin?

A. That's right.

Q. As listed in the 4th line of Table 1. Now, the next figure that you show is male citizens between the years of 21 and 60 who have four or more years of school attendance, is that correct?

A. Yes.

Q. And what does the four or more years of school attendance indicate? Why that description?

A. Well, I felt that such individuals will qualify for Grand Jury service under the qualification, “un-

(Testimony of Harry Tatsumi Oshima.)

derstandably [74] speak and write and read the English language.”

Q. Yes, and that shows that there are 2,172 caucasians, 15.5; and 11,850 non-caucasians, a percentage of 84.5. Is that right? A. Yes, in 1947.

Q. And then the next thing you have done is take the eight years or more school attendance with the same point in view. A. Yes.

Q. On the proposition of understandably speaking, reading and writing of English?

A. Yes.

Q. Giving you a different group with four more years education, is that right? A. Yes.

Q. And that shows of the caucasians, you have 1,787 or 17%; and of the non-caucasians, you have 8,735 or 83%—a total of 10,522, is that correct?

A. Yes.

Q. And as indicated in footnote 5, were those figures arrived at by the same statistical methods that you employed for determining citizens as in line 4? A. Yes, in general.

Q. Now, the next—the literacy statistics also come from the census, do they not?

A. More accurately, number of school years—number of school years in attendance. [75]

Q. That is shown in the census?

A. Yes, census of 1940.

Q. Yes. Now the next breakdown that you come to is that of registered voters for Maui in 1946, the last period of registration? A. Yes.

(Testimony of Harry Tatsumi Oshima.)

Q. Is that correct? A. That's right.

Q. And it shows that of the registered voters, and this is compared to citizens—that is, all the citizens may not be registered voters.

A. That's right.

Q. But of the registered voters of Maui in 1946, there are 1,542 caucasians, 22.9%; and there were 5,186 non-caucasians, 77.1%—a total of 6,728 of registered voters, is that correct? A. Yes.

Q. That, of course, would include men as well as women? A. No, this is male.

Q. Only male?

A. Yes, I should have that notation in there.

Q. But therefore there would be more registered voters when you add the women? A. Yes.

Q. We will come to that later, will we not, in one of our other tables?

A. That source is not given. The page that it is [76] supposed to be in is missing, but this comes from the County Clerk. Note 6 is a figure of statistics coming from the County Clerk.

Q. Of Maui County? A. Yes.

Q. You have eliminated—when you say registered voters of 1946 on Table 1, that means male registered voters?

A. Yes, I believe so. I will check that afterwards.

Q. But that is with regard to the qualification of a grand juror—the Territorial statute being, a male over 21 and less than 60 years, and having the other requirements mentioned in the statute.

(Testimony of Harry Tatsumi Oshima.)

A. I don't think there is a limit of 60 years.

Q. Not of registered voters—anyone over the age of registration. A. Yes.

Q. Now, the bottom half of the table, Mr. Oshima, represents what?

A. This represents the information on the Grand Jury panel for the various years from 1942 to 1947. First, a determination was made—well, in a similar way makes a division between caucasian and non-caucasian members of the panel for various years and with the total for each of the two categories. The percentage was calculated—a percentage based on 50, the total for the Grand Jury in each year. Now, the information comes mainly from a [77] special investigation that I conducted together with Dr. Reinecke in order to determine the racial background of the members of the panel.

Q. Where you use the expression, caucasian, do you include also those of Portuguese-Spanish origin, Mr. Oshima? A. Caucasian, yes.

Q. All caucasian—that is according to the census definition?

A. Yes, this is according to the census definition, as stated previously for the first part of the table.

Q. Now in 1947, footnote 7, which you will look for during the recess, has reference to the source—

A. Which I have just stated.

Q. Which you have just stated. Now of the instant Grand Jury, the 1947 Grand Jury, 28 of

(Testimony of Harry Tatsumi Oshima.)

those persons or 56% are caucasian, and 22 or 44% are non-caucasian—a total of 50, is that right?

A. Yes.

Q. And that compares with the comparable figures in the table above showing the breakdown according to male and female and age group and educational groups also on a racial basis, is that right?

A. Yes.

Q. For example, there are 22.9% caucasian registered voters and 56% caucasian grand jurors in 1947?

A. Yes.

Q. There are 77.1 non-caucasian registered voters in [78] 1947 and 44% non-caucasian grand jury members in the same year. Is that the comparison?

A. Yes.

Q. Now, with regard to the year 1946, there were 36 caucasians on the Grand Jury panel, a total of 72%; 14 non-caucasians, a total of 28%; a total of 50 grand jurors, is that right?

A. Yes.

Q. And throughout we refer to fifty grand jurors in all of the succeeding years. Going back, in 1945 on the Grand Jury there were 32 caucasians, 64%; and there were 18 or 36% non-caucasians. And in 1944, there were 33 or 66% caucasians, and 17 or 34% non-caucasians. And in 1943, there were a total of 32 or 64% caucasians, and a total of 18 in number or 36% non-caucasians on the Grand Jury panel. And in the year 1942, there were 29 or 58% non-caucasian grand jurors and—caucasian grand jurors, rather—and there were 21 or 42% non-caucasian grand jurors, is that correct?

(Testimony of Harry Tatsumi Oshima.)

A. Yes.

Q. Your population characteristics of the years 1940 and 1947 as seen in lines 2 and 3 of the top part of Table 1, are those population characteristics stable within an error of 5% over the years 1940 to 1947?

A. Perhaps less—about 3%.

Q. 3% error. Does that complete Table 1, Mr. Oshima?

A. Yes.

The Court: We will take a recess until 1:30.

(Circuit Court recessed at 12:00 noon.) [79]

(Circuit Court reconvened at 1:30 p.m.)

Mr. Resner: If your Honor please, in order to expedite the proceedings and not waste any of the Court's time, we are preparing subpoenas for additional witnesses to bring them in the morning. Now, we will subpoena the Jury Commissioners, of course, and we desire the presence, as our challenges show, to examine in voir dire the fifty members of the panel.

The Court: For what purpose?

Mr. Resner: To put in the record their occupations, racial groups, age, and information of that nature pertinent to this particular challenge, which is the direct source, if your Honor please.

The Court: Yes, but I think that can be obtained from the questionnaires without interfering with their livelihood. If that is all you want, it should appear in their questionnaires.

Mr. Resner: We are subpoenaing the Jury Commissioners—and the questionnaires, that is all right.

(Testimony of Harry Tatsumi Oshima.)

But this other thought occurs to Counsel, and that is that we have directed to Counsel, as the statutes and the cases appear, not only a general challenge for cause on the basis that our challenge shows of a general nature, but we are also objecting to a great many of the grand jurors individually upon the grounds of bias and prejudice. [80]

The Court: But you have stated no bias and prejudice and no fact from which that can be concluded, Mr. Resner.

Mr. Resner: I think, your Honor, that we have.

The Court: All you have stated is that they belong to the employer class, and I know of no bias and prejudice that because a man employs another that he is prejudiced against the defendants in person.

Mr. Resner: We have alleged, if your Honor please, on page 2 of our challenge directed against the grand jurors for cause that the "aforesaid grand jurors, and each of them, are biased and prejudiced against defendants; that said grand jurors are members of the employer class or their representatives; that said grand jurors are connected with, either directly or indirectly, the various business concerns involved in the recent pineapple strike out of which the instant cases arose; that defendants cannot get a fair or impartial consideration of the charges against them at the hands of the aforesaid grand jurors."

In other words, we have a direct interest——

(Testimony of Harry Tatsumi Oshima.)

The Court: You have alleged nothing but conclusions of law. You have alleged no fact upon which the Court as a matter of law could adjudicate *prima facie* prejudice.

Mr. Resner: Well, if I read the decisions of the [81] Supreme Court of the Territory correctly, your Honor, I think that is sufficient. I will be glad to show your Honor the cases.

The Court: I am fairly familiar with the cases on that question, bias and prejudice, if you allege facts from which *prima facie* conclusion would be drawn, admitting the truth of the facts as they are alleged. But you allege no fact except that they belong to the employer class, and I know of no conclusion of law that because a man employs another, he has bias and prejudice against workmen.

Mr. Resner: It goes further than that, Judge. We have alleged that because of the recent pineapple strike in which these grand jurors had a direct business interest and in which these defendants were involved, that a prejudice exists because of the activities on the part of these defendants in the minds of these grand jurors and that situation is—that is an allegation of fact.

The Court: This is not a trial of a union. This is a gathering of the Grand Jury, as I understand it, for the Prosecution to present evidence that persons have violated the statutes against the peace of the community and gone beyond any protection that they might have. There is nothing that makes on

(Testimony of Harry Tatsumi Oshima.)

a Grand Jury showing a matter of disqualification because someone may even belong to the very concern in which these [82] people also worked. The question is did they go beyond the scope and violate the laws against violence, beyond any proper—well, let's put it—peaceful picketing that they are permitted under the statute and so violate the Territorial law against violence? If they did, all right—even if a man knew of it and stood by and belonged to the employer class, and therefore knowing so and in that sense could be said to be biased and prejudiced—since the Grand Jury is an accusatory body and it is not a finder of the final guilt or innocence, any person who knows of an offense against the laws of the Territory would be obligated to act even if he were a grand juror.

Mr. Resner: The point is, Judge, that in cases starting with *Norris vs. Alabama*, the United States Supreme Court has said that even a Grand Jury, which is an accusatory body, must be fair and impartial to the same extent that the petit jury is because if a grand juror is biased and prejudiced against a particular person presumably who has committed a crime according to the Grand Jury, an indictment may follow as a result of prejudice which it would not follow from a Grand Jury fairly and democratically selected. That is why the Supreme Court says you are entitled to an impartial Grand Jury, as well as petit jury.

The Court: What I am pointing out to you, Mr.

(Testimony of Harry Tatsumi Oshima.)

Resner, is that your challenge sets forth no fact [83] upon which bias and prejudice flows as a matter of law.

Mr. Resner: Well, we have the affidavit of John Maile which is attached to our challenge for cause, if your Honor please. We have alleged therein that Kenneth Auld is connected with the California Packing Corporation; that the Messrs. Richard H. Baldwin and Edward H. Baldwin are plantation executives and have financial connections with the pineapple companies; that Mr. Edward S. Bowmer is connected with the Wailuku Sugar Plantation. And we have alleged that these connections in connection with the pineapple strike has caused a prejudice on the part of these grand jurors against these defendants, and you cannot gainsay the fact that these defendants are members of a labor organization which was involved in that particular dispute, and as Mr. Justice Jackson stated in the case of *Faye vs. People of New York*, where the defendants in a criminal case are those who are involved in a labor dispute, then the situation may be such that whether or not they are fairly and democratically selected in the cross section of a community is of importance.

The Court: You have alleged nothing there by which you are justified in having an examination of the individual jurors, and the Court is not going to turn this into a fishing expedition on examination of the individual grand jurors. That can be

(Testimony of Harry Tatsumi Oshima.)

covered by the proper [84] admonition to the jury when it assembles that any person on that Grand Jury who finds himself prejudiced against any of the defendants should withdraw.

Mr. Resner: It is one thing to submit to the Grand Jury the question of disqualifying himself upon his own investigation into his mind and soul; it is another thing to permit Counsel for the accused to investigate those jurors on voir dire and to find out what facts their testimony reveals, and as the Territorial statute says: "Before the grand jury is sworn, the prosecuting officer, or any person held to answer a charge for a criminal offense may challenge the panel, or an individual juror, for cause to be assigned to the court. All such challenges shall be tried and determined by the court."

The Court: You have failed to emphasize the proper prelude in that statute—may be challenged for cause assigned. All you have done is assign the general conclusion of law that because these men have a certain economic position that their minds are prejudiced.

Mr. Resner: We have alleged more than that. We have alleged their connection with interests who are at odds with workers in the recent pineapple strike out of which flows, we think, the special state of mind and prejudice which would cause them to be prejudiced [85] and biased against these persons accused here.

The Court: The Court announces the fact right

(Testimony of Harry Tatsumi Oshima.)

now that the Court will not turn this into a general free-for-all examination of every member of the panel, but if you have any facts indicating that any of these gentlemen have, by voice or conduct, given cause in fact to draw the conclusion that they are prejudiced against any of these defendants in the criminal matters before the Court, the Court will listen to them. But all you have done is to impinge into this affidavit a non-existent class hatred by employers against laborers, whereas the other situation is entirely subordinated—the situation that the employees would be crazy to be hating their employers. Whether the laborer does hate the employers is a matter for your own conscience.

Mr. Resner: I am sure, your Honor, I make no feeling for any group of people or any particular person. Every man has his own conscience and convictions. I might point out to the Court that in several Los Angeles cases from the Superior Court of the state and in the District Court of Los Angeles, the judges have uniformly permitted the kind of inquiry I respectfully ask your Honor to allow us.

The Court: I am permitting you to call the Jury Commissioners and find out what they did, and I am [86] permitting you to find out, either through yourself or the lips of your clients, that anyone of these gentlemen who has been subpoenaed as prospective grand jurors has evidenced in fact any animus against the persons of any of these defend-

(Testimony of Harry Tatsumi Oshima.)

ants. I will listen to that, but I will not listen to a fishing expedition on your part to go into the mental condition of each of the jurors unless you prelude it by a substantial showing in fact that they have given voice to that and have shown by their acts in the community that they are not going to act as grand jurors under the oath which they take—to act unbiased and without prejudice as against the rich and the poor and give them equal justice in this court.

Mr. Resner: I wanted to point out to your Honor that in the Los Angeles cases, the investigation was allowed, not only of the jury commissioners as such and the officials of court who selected the jurors, but it was permitted of the jurors themselves.

The Court: I am not responsible for the Los Angeles court.

Mr. Resner: I cite that as authority. I assume your Honor is interested in authorities and practices of other courts.

The Court: You may proceed with your examination this afternoon. We will take up the specific problem when it arises, but I have given you a little warning [87] in advance and an indication of the Court's mind on the point.

Mr. Resner: I merely for the record want to save my exception and take exception to the Court's ruling that we cannot on voir dire examine these jurors and that our individual challenge for cause

(Testimony of Harry Tatsumi Oshima.)

to the individual jurors as such, according to your Honor insufficiently states the basis to hold a voir dire.

The Court: At which time I so rule, Mr. Resner, and the exception is allowed.

Q. (By Mr. Resner): Mr. Oshima, with regard to Table 1, which we are reviewing at this point, is there a method employed by statisticians to determine the area of probability? That is, taking this particular Grand Jury with the percentages that it does have in 1947 of caucasians and non-caucasians, and assuming a random selection of the grand jury of fifty from amongst the registered voters who conceivably would be eligible, is there some basis that you have for determining how many times this particular kind of a racial makeup would occur in a grand jury of fifty?

Mr. Crockett: We object to that question, if the Court please—rather involved. Counsel mentioned the fact of random selection. The commission is not under any obligation to make a random selection. As a matter [88] of fact, they are specifically requested to pick out people who in their opinion are qualified to act as jurors.

The Court: The objection is sustained on the grounds stated.

Mr. Resner: May I point out to your Honor that the Supreme Court—

The Court: The Court has ruled, Mr. Resner, and I tried to make it plain this morning that argument comes before ruling, and not after.

(Testimony of Harry Tatsumi Oshima.)

Mr. Resner: I didn't get a chance to make a——

The Court: That is perfectly true, and the record may so show.

Mr. Resner: I will refer your Honor to a Supreme Court decision. I should like to make an offer of proof, if I may, your Honor.

The Court: You are entitled to an offer of proof.

Mr. Resner: Very well.

The Court: As long as it is an offer of proof of fact and not an argument, Mr. Resner.

Mr. Resner: I don't know what the story of that is, your Honor. I am trying to proceed in an orderly fashion here and desire justice to my clients, to the courts and to justice. The offer of proof which I wish to make to the Court is this: that were I permitted to ask the question of Mr. Oshima and were he [89] permitted to answer, the proof would be that not more than once in ten million times, if this grand jury were selected at random, would the racial makeup of the grand jury come out as it has in 1947 on Maui; namely, 56% caucasians and 44% non-caucasians, when regard is had to the selection of those persons from the registered voters of 1946 on Maui; of whom 22.9 are caucasians and 77.1 are non-caucasians. In other words, this kind of a grand jury would happen not more than once in ten million times. And conversely, we would prove, if the questions were permitted and the answers allowed, that a grand jury selected at random

(Testimony of Harry Tatsumi Oshima.)

on Maui from amongst the registered voters, male voters, of 1946—would prove that the non-caucasian makeup of the grand jury would range from 62 to 70% and that the caucasian composition of that grand jury would range from 30 to 22%.

The Court: I understand your objection goes to the offer of proof as well as to the question, Mr. Crockett?

Mr. Crockett: Yes, if the Court please.

The Court: The objection is sustained.

Mr. Resner: We take an exception to your Honor's ruling that we cannot be permitted to prove it and also your Honor's ruling on the offer of proof.

The Court: Exception allowed. [90]

Q. (By Mr. Resner): Mr. Oshima, would you turn next to Table 2—and may I have the original copy of that. Do you have the original?

Witness: I think the original is there.

Q. (By Mr. Resner): Have you got another sheet? I wanted to be able to give Counsel here——

Witness: Here is another one.

(Witness handing to Counsel for Movants.)

Mr. Resner: I should like to offer Table 2 for identification.

The Court: Next number.

Q. (By Mr. Resner): Have you Table 2 in front of you, Mr. Oshima? A. Yes.

Q. Will you tell us, please, what it represents and indicates.

(Testimony of Harry Tatsumi Oshima.)

A. The main difference of Table 2 from Table 1 is that this time the column, the first column, caucasians and part-Hawaiians, was somewhat modified. On the Table 2, which was just entitled, "Caucasian", without the part-Hawaiians in the population statistics, we added to the total caucasians the part-Hawaiians—deduct the part Hawaiians from the non-caucasian column. Now, the first row of statistics was taken, of course, from Table 1 with the modification I just stated—adding the total of part- [91] Hawaiians to the caucasians of Table 1, deducting the same from the non-caucasian.

Now, for the panel, a similar treatment was applied. Members of the panel who were caucasians and part-Hawaiians were included under column, "Caucasians and Part-Hawaiians." They were deducted or excluded from the column, "Non-Caucasian", so that now that column, "Non-Caucasian", for both the panel and population will exclude part-Hawaiians—which was not the case for Table 1.

Q. The sources for this table were the same as the sources for Table 1, is that correct?

A. That's right.

Q. And the statistical method of computation the same? A. Yes.

Mr. Resner: If your Honor please, I will offer Table 2 in evidence at this point.

Mr. Crockett: No objection.

(Testimony of Harry Tatsumi Oshima.)

The Court: It may be admitted in evidence with the same number.

Mr. Resner: As I read it then, Mr. Oshima, it provides—I mean you find this: that the total male and female population between the ages—no, of the total male and female population of Maui as of 1947, there were 14,904 or 26.6% caucasians and part-Hawaiians, is that correct? [92]

A. Yes, sir.

Q. And there were 41,076 or 73.4% non-caucasian? A. Yes.

Q. And the next figure is that of males between the ages of 21 and 60 years, who are citizens, with four years or more school completed. And there are 3,692 or 26.2% of those who are caucasian and part-Hawaiian. A. 3,672.

Q. 3,672, yes. And there are 10,350 or 73.8% who are non-caucasian. A. Yes.

Q. Now this description of caucasian and part-Hawaiian, does that mean caucasian and caucasian-Hawaiian—is that the racial makeup?

A. About 95% of them will come under that classification.

Q. On the panel, you have broken it down as follows, and the inquiry reveals this, does it: that on the 1947 or present panel of 50, that 38 of those persons or 76% are caucasian and part-Hawaiian?

A. Yes.

Q. And 12 or 24% are non-caucasian?

A. Yes.

(Testimony of Harry Tatsumi Oshima.)

Q. Then going back over the succeeding years immediately preceding, in 1946 there were 39 caucasians and part- [93] Hawaiians or 78% ; and there were 11 non-caucasians or 22% ? In the year 1945, there were 42 or 84% caucasian and part-Hawaiian, and 8 or 16% non-caucasian. A. Yes.

Q. In the year 1944, there were 37 or 74% caucasian and part-Hawaiian; and 13 or 26% non-caucasian? A. Yes.

Q. And in 1943, there were 41 or 82% caucasian and part-Hawaiian; and 9 or 18% who were non-caucasian? A. Yes.

Q. And then in 1942, the first year you took, there were 40 or 80% who were caucasian and part-Hawaiian; and 10 or 20% who were non-caucasian? A. Yes.

Q. That's right. Very well, let's turn to Table 3—oh, if your Honor please, I had intended to ask Mr. Oshima at this point the percentage of probability. In view of your Honor's ruling on the previous question, and I assume your ruling will be the same, I should like to make an offer of proof on this particular table.

Mr. Crockett: We object to the offer, if the Court please, on the same ground previously stated.

The Court: You may make your offer.

Mr. Resner: My offer is this, your Honor: that were Counsel permitted to ask the questions and were [94] the witness permitted to answer, his testimony would be that with regard to the instant

(Testimony of Harry Tatsumi Oshima.)

or 1947 grand jury panel of 50 persons, that if it were selected at random from amongst the population of Maui with regard to the registered voters eligible for jury duty, according to statutory qualifications, that the racial characteristic of this grand jury, which is made up of caucasians and part-Hawaiians in the percentage of 76 as against non-caucasians with a percentage of 24%, would occur once in twelve million times; and on the other hand, if the grand jury were truly selected on a random basis, that the probabilities are that in excess of 70% of the grand jury would be non-caucasian and less than 30% would be caucasian and part-Hawaiian or caucasian-Hawaiian.

Mr. Crockett: We object to the offer, if the Court please, on the same ground previously stated.

The Court: Objection sustained.

Mr. Resner: Very well, we will take an exception.

The Court: I can see no use in wasting time on such abstractions. I think it is time to get down to the meat of the question—what this Grand Jury Commission did.

Mr. Resner: What is the basis and the reason, Mr. Oshima, for the combination of Table 1 and Table 2?

Witness: Well, in looking over the occupational status or economic position of part-Hawaiians, most [95] of whom are part-caucasians, I found that a great number of these people, probably 80 to 90%,

(Testimony of Harry Tatsumi Oshima.)

occupy very important positions—higher-ups, so to speak. And in talking with other social scientists, I find that this is something to be expected of the Islands in view of the social, economic, historic background of the Islands. In view of this, statistically the real picture that Table 1 is trying to bring out will come out much more plainly if modifications, such as Table 2 have contained, are presented.

Mr. Resner: Thank you. Now, if your Honor please, I show Counsel Table 3 which I should like to offer for identification at this point.

The Court: The next ensuing number.

Mr. Resner: That will be No. 7, is that right?

Deputy Clerk: Number 7.

Mr. Resner: What is Table 3, Mr. Oshima?

Witness: Table 3 is a distribution of employed workers by major occupation group in the population of Maui County and in the panel.

Q. And this is the breakdown of population groups in the community as compared with the population group on the instant Grand Jury, is that correct?

A. Yes. The title and the categories in the table are taken directly from the United States Bureau of the Census 1940 report. [96]

Q. Where you say, "Major Occupation Group", and there are twelve classes of occupations or workers, is that the breakdown as it occurs in the census?

A. Yes, except with one item.

Q. And that is what?

(Testimony of Harry Tatsumi Oshima.)

A. That item is merely the combination of professional and semi-professional workers into one class, as I have it in my table here. Instead of making a separate class, since they were treated more or less in the same category I combined both of them.

Mr. Resner: Very well. I should like to offer Table 3 in evidence at this time, if your Honor please.

Mr. Crockett: No objection, if the Court please.

The Court: It will be marked in evidence with the same number.

Q. (By Mr. Resner): Mr. Oshima, this table is broken down according to male and female workers on Maui, and then according to male workers. Is that correct? A. Yes.

Q. And then that male and female constitutes your first breakdown; male your second; and your third breakdown is what, Mr. Oshima?

A. The third breakdown is a column which is a slight modification of the male column—which is not used for any purpose here but which is used for the later table. It is an attempt—that column is entitled, “After Deductions For Male Non-Laborers From Classes, [97] 4-12”. It is an attempt to separate the type of workers who may come under the category from the viewpoint of income and from other criteria into the managerial, supervisory group of workers, so that as noted in the footnotes—column 5 is the column I am discussing—“Deduc-

(Testimony of Harry Tatsumi Oshima.)

tion of Male Non-Laborers from Classes, 4-12"—well, in Class No. 5, the foremen and some of the entrepreneurial craftsmen are deducted, so you see that total slightly smaller than the previous column—the comparable total.

In the next class, operatives and kindred workers, some of the entrepreneurial operatives are separated. Class 7 is—that column is the same as the one for the previous column. For class 8 also some deductions have been made from the previous column—574 minus the appropriate number, 487, and this deduction is mainly because of certain City and County—not officials, but policemen, firemen who cannot be thought of as laborers. Similarly for No. 9, class 9—farm laborers and farm foremen. The foremen have been deducted from that category because foremen are not classifiable as laborers. The next one is the same—11 is the same and 12 is the same. In other words, the modification that I attempted to do in that column— [98] these modifications were aimed at the segregation of non-laborers from classes 5 to 12, inclusive.

Q. Now, then, the figures in your twelve breakdowns show this, then, do they? Without—reading from the record because it is in evidence now—the numbers according to male or female, or the correction, but only according to occupational groups and numbers in percentages on the panel, we find this to be the case: that on the instant panel of pro-

(Testimony of Harry Tatsumi Oshima.)

fessional and semi-professional workers, there are two in number, or 4%. Is that right?

A. Yes.

Q. What is included among such persons as professional and semi-professional persons?

A. Under that you have the inclusion of teachers, for example, and—exactly what two people in the panel were classified as in the first category, I don't remember, but that category could have doctors, dentists, engineers, chemists, different cultural—

Q. Yes. Now the second class is farmers and farm managers of whom there is one, or 2% on the 1947 Grand Jury. Now, what is meant by that classification, farmer owner?

A. That one person, I happen to remember off-hand now, is the manager of a plantation, which, under the census classification, falls in that category. [99]

Q. Very well. Third, we have proprietors, managers and officials, and executives of farms, of whom there are 33, or 66%, on the instant Grand Jury. Is that right?

A. No, that column—I am sorry—that class 3 should read, "Proprietors, managers and officials, except farmers."

Q. Oh, "except farmers"—which is the second group, which is group 2?

A. That's right. No, not necessarily second. The

(Testimony of Harry Tatsumi Oshima.)

executives of the farm, if you can think of that term, would be coming in the second.

Q. Except those included in group 2—group 3 includes those described except those described in group 2? A. In general, yes.

Q. The figure is correct—33 of those, or 66%, on the present Grand Jury? A. Yes.

Q. And the next is “Clerical, sales and kindred workers,” of whom there are five, or 10%, on the Grand Jury? A. Yes.

Q. Does that include retail workers?

A. Yes, retail workers, cashiers, bookkeepers, typists, stenographers, salesmen.

Q. Now the 5th class is “Craftsmen, foremen and kindred [100] workers,” of whom there is one, or 2%, on the instant Grand Jury. What is included in that description?

A. In that description, you have the skilled workers who are—who belong more to the feudal skilled, maybe, rather than the mass production, machine skilled. The “Operatives,” which are the next, will contain those who are skilled with complex machines.

Q. What is a good example of a craftsman, for example? A. Carpenter.

Q. Now, the next is “Operatives and kindred workers,” of whom there are two on the Grand Jury, or 4%.

A. They are the individuals who operate machines. They will be machine tenders, probably ma-

(Testimony of Harry Tatsumi Oshima.)

chinists, truck drivers; locomotive engineers would come under there.

Q. All right. Now next is "Domestic service workers"; there are none on the panel. That is correct, isn't it?

A. Yes. That category includes servants, maids in private homes, cooks and so forth.

Q. The 8th group is "Service workers, except domestic," of whom there is one, or 2%, on the Grand Jury. That includes what?

A. That is firemen, I think, of the government, of the city and county, of the County of Maui.

Q. The 9th group is "Farm laborers and farm foremen," [101] which are put together in the census, and there is one, or 2%. Do you know who that one is on the Grand Jury?

A. I think that includes a luna on one of the plantations—agricultural operation department.

Q. Then the 10th group is "Farm laborers," of whom there are none on the Grand Jury?

A. Yes.

Q. The 11th group is "Laborers, other than farm and mine" workers, of whom there is one, or 2% on the Grand Jury.

A. Yes. That probably includes laborers who may be in the mill, who have no skill so that they will not come under operatives, but who—say, semi-skilled workers who cannot come under classification 6.

Q. 12 is the last and that is for whom occupa-

(Testimony of Harry Tatsumi Oshima.)

tions are not reported, of whom you have three, or 6%, on the Grand Jury.

A. Yes. Those are the individuals from whom our information is not very certain, or I don't have any information.

Q. Your investigation revealed, did it, that there were no farm laborers as such on the Grand Jury?

A. 1947? No.

Q. 1947. Just by way of comparing the population makeup of those qualified for jury duty according to [102] the statutes with those who are on the jury according to occupation groups, would this be the way to make the comparison, Mr. Oshima? Take, for example, group 3 which includes proprietors, managers and officials—that there are 681 males in that category, or 3.86%, as against the farm laborers and farm foremen of whom there are 8638 males, or 48.92%.

A. Well, yes. If you want to, you can include the farm foremen—you use the figure next to it; 8,195 will be an estimate of the farm laborers only, without the foremen.

Q. In other words, the next figure only would show those non laborers excluded, and you would have 8,195, or 46.41% just ordinary farm laborers?

A. Yes.

Mr. Resner: Now, if your Honor please, I desire to make the same offer of proof with regard to probability of selection on a random basis of this Grand Jury as used on the racial point previously

(Testimony of Harry Tatsumi Oshima.)

made on the first two tables. I want to make an offer of proof in view of your Honor's ruling.

The Court: Make your offer.

Mr. Resner: Well, rather than repeat it, I should like to refer back to the offer previously made and to say that the offer will be the same. Selected at random, this kind of a grand jury on [103] an occupation basis wouldn't happen more than once in sixteen million times.

Mr. Crockett: We object to the offer on the same grounds, if the Court please, as previously stated.

The Court: The Court sustains the objection on the grounds that it has no informative effect upon the issue as to whether this group of Jury Commissioners deliberately have gone against their duties under the statute.

Mr. Resner: I desire to take an exception to your Honor's ruling.

The Court: Exception allowed.

Mr. Resner: Turn please to Table 4, Mr. Oshima. I will offer Table 4, which I have shown Counsel for the Prosecution, as defendants'—

The Court: Take another number. What is the next one?

Deputy Clerk: Movants' Exhibit 8.

The Court: For identification.

Mr. Resner: What is Table 4, please, Mr. Oshima?

Witness: Table 4 is—the title of the—the title is taken from the United States Census—"Class of

(Testimony of Harry Tatsumi Oshima.)

Worker of Employed Persons Except on Public Emergency Work, Maui County.” “Class of Worker of Employed Persons Except on Public Emergency Work” is the name of the [104] table taken from the 1940 Census. These are the estimates I made, since the most detailed census report doesn’t give any exact figure for the different categories for Maui, although it does give for the Territory and the city. On the basis of various statistics of these various sources, I made these estimates as follows: Total employed is the same as in the occupational table, Table 3; mainly, 21,865. I am talking about the table on top.

In the United States Census, the total employed for this table is broken into four categories—wage and salary workers; employers and own-account workers; unpaid family workers; and class of worker not reported.

Q. And that shows what with regard to numbers and percentages, Mr. Oshima?

A. My estimates show 89.4% for wage and salary workers; 8.6% for employers and own-account workers; 1.6% for unpaid family workers; and .4% for the last category—class of worker not reported.

Q. With regard to the bottom part of the table, what does that show?

A. This bottom part makes an attempt to divide up wage and salary workers—a total, which is derived from the table on top, namely 19,550. This

(Testimony of Harry Tatsumi Oshima.)

total is divided up into the following five groups: Professional and [105] semi-professional workers employed, and therefore receiving salaries, of course; Managerial-supervisory employees; Government officials; Clerical, sales and kindred workers; and laborers.

Now, each of them—well—in the footnote, you will find a description of the groups contained in each of these five categories. Now, for professional, my estimates indicate that the male and female, first column, professional and semi-professional workers employed constitute 5.5% of the wage and salary workers; Managerial-supervisory employees, 2.8%; Government officials, .9%; Clerical, sales and kindred workers, 8.3%; and the last category, laborers, 82.5%.

Q. Now, you carry that over, do you, and compare it with the male population of Maui and then with the category called, "Qualified Male" population, the latter being those qualified for jury duty, grand jury duty? A. Yes.

Q. Is that the purpose of the carrying over?

A. Yes.

Q. What do we see by that comparison, Mr. Oshima?

A. We see that the laborers constitute 80.2% of the wage and salary workers, and all the rest of the workers who are salary receivers, 19.8%.

Q. In other words, in breaking it down into numbers, [106] there are 12,073 qualified males, are there? A. Yes.

(Testimony of Harry Tatsumi Oshima.)

Q. On Maui? A. Yes.

Q. And that includes those who have registered, as well as those who have not registered?

A. That's right.

Q. And there are 2,387, or 19.8%, in occupational groups or activities other than laborer, is that correct? A. Who are employed?

Q. Who are employed. A. Yes.

Q. Have income. A. Yes.

Q. And there are 9,686, or 80.2% of laborers who are employed? A. Yes.

Q. Among qualified persons for jury duty?

A. Yes.

The Court: I would like to ask the witness a question in connection with your last question, Mr. Resner.

Mr. Resner: Yes, your Honor.

The Court: Counsel has used the term "qualified for jury service." Do you have any personal knowledge of the qualification of any of these 9,000? [107]

Witness: No.

The Court: You are taking it from statistical tables of some sort?

Witness: Yes.

The Court: Simply by reason of the question whether they have gone to school to a certain grade?

Witness: That is one of the qualifications, yes.

Mr. Resner: If your Honor please, there are more. I mean the statutory qualifications set out in the Territorial act——

(Testimony of Harry Tatsumi Oshima.)

The Court: I am simply trying to find out, bring it down into the record that he is simply dealing in abstract statistics and nothing concrete.

Mr. Resner: The statistics have relation to the population, which is very concrete.

The Court: Proceed.

Mr. Resner: That completes Table 4, Mr. Oshima? Is that correct?

Witness: Yes.

Q. Would you turn, please, to Table 5. If your Honor please, I should like to offer Table 4, which we have just been referring to.

The Court: It may be received and marked, together with the other tables.

Mr. Resner: We will take No. 8 in evidence.

The Court: Same number as was used for identification. [108]

Mr. Resner: I should like to hand to the Clerk for identification at this point, Table 5 for identification, next in order.

The Court: No. 9 for identification.

Mr. Resner: I have served Counsel with a copy. Now, what does Table 5, which is 9 for identification, show, Mr. Oshima?

Witness: The table is, in a way, a continuation of Table 4.

Q. Yes.

A. The first—the part of the table coming under “In the Population” are taken over—our estimates are mainly based upon Table 4. The method of esti-

(Testimony of Harry Tatsumi Oshima.)

mation is in the footnote. Most of the figures are direct copies of Table 4. "In the Panel"—the different years for the panel, the occupational status of the members of the panel from 1942 to 1947 were looked up in the directory mentioned previously, and their status. These are the five classifications I have on this table: Managerial-supervisory; Entrepreneurs; Clerical, sales; Laborers; and all others. They were looked up and they were added up for each of the categories for each of the years, and you find the percentages presented in the section under, "In the Panel"—under the heading, "In the Panel," for different years. The percentages, any of the percentages, divided by two, [109] will give you the actual number of panel members who were classified in that particular place. For example, 1947, the managerial-supervisory category indicates 66%. 66 divided by 2 gives you 33, which is the actual number of the members on the panel who fall within that category.

Q. Let me ask you this, Mr. Oshima, at this point. If we take, first, the managerial-supervisory group, we find that among male and female, there are 709, or 3.2% Is that correct? A. Yes.

Q. And then we find that there are 709 of the male sex, or 4% of the population of Maui.

A. Yes.

Q. Is that right? A. Yes.

Q. And then the next figure shows that there are 709—the same figure all the way through?

A. Yes.

(Testimony of Harry Tatsumi Oshima.)

Q. Who are qualified under the statute for jury duty, or 5.6%. A. Yes.

Q. Is that right? A. Yes.

Q. And then you carry it into the next column and you compare it with the panel and we see that in 1947, 66% of the panel is made up of managerial-supervisory persons. Is that right? [110]

A. Yes.

Q. And in 1946, 56%; in 1945, 66%?

A. Yes.

Q. And in 1944, 62%. A. Yes.

Q. And in 1943, 62%. In 1942, 54%—an average of 61% of the grand jury over the years to 1942 being made up of representatives of the managerial-supervisory class. A. Yes.

Q. And then you take entrepreneurs and clerical, and you read the lines across, and the figures in the exhibit right in the same way show corresponding numbers of persons and percentages. Is that correct? A. Yes.

Q. And then we come to the fourth group which is marked as "Laborers" and we see that among male and female in the population there were 16,490, or 75.4% of the population; that of males in the population, there were 14,083, or 79.8%; and that of the qualified jurors, persons qualified for grand jury service, there were 9,686 from amongst that number, or 76.5% qualified. Is that right?

A. Yes.

Q. Then we carry it further and we see that in

(Testimony of Harry Tatsumi Oshima.)

1947 there are 10 such laborers on the grand jury.

Is that correct? [111] A. Yes.

Q. And then in 1946, six. In 1945, ten. In 1944, fourteen. In 1943, fourteen. In 1942, sixteen. An average of 11.7% over the years from 1947 to 1942.

A. Yes.

Q. And carrying it down to the next two figures, you have added together the managerial, entrepreneurial and clerical workers and done the same thing by extending the figures across the page, is that right? A. Yes.

Q. And you find that there are 4,200 male and female in the population, or 20.3% of those groups. There are 3,169 males, or 18.4%; and of qualified persons for jury duty, 2,579 or 21%. Is that right?

A. That's right.

Q. And in 1947 in the panel, we find that there is 89.1% of such persons in the panel. Is that right?

A. Yes.

Q. And then going back over the past several years, 93.2 in 1946. 89.1 in 1945. 85.7 in 1944. 84.8 in 1943. 83.3 in 1942. An average of 87.5 in the panel over the years from 1942 to 1947 from amongst the managerial, entrepreneurial or clerical groups. Is that right?

A. And clerical group.

Q. And clerical group—I so intended my question. And [112] then the last item on the page indicates that of the laborers in the population among the male and female, there were 16,490, or 79.7%

(Testimony of Harry Tatsumi Oshima.)

of males, and this whole table refers to working people—these people have income or who work. Is that correct? A. That's right.

Q. Male and female on the first item. But of the male workers in the population, there are 14,083, or 81.6%; and of those qualified for jury service on the grand jury, 9,686, or 79%. Is that right?

A. Yes.

Q. Extending it over to the panel, we find that of laborers there are 10.9% on the 1947 grand jury.

A. That's right.

Q. Going back over the years, in 1946 we found 6.8. In 1945, 10.9. In 1944—14.3. 1943—15.2. In 1942, 16.7—a total of 12.5 as an average from 1942 to 1947 of laborers on the panel. Is that right?

A. Yes.

Q. The footnotes following this, Mr. Oshima, reveal your sources and your methods of computation as on the previous tables in evidence?

A. Yes.

Mr. Resner: I should like to offer Table No. 5 in evidence, if your Honor please.

The Court: It may be marked in evidence with the same number. [113]

Mr. Resner: If your Honor please, at this time I want to repeat my offer of proof with regard to percentage of probability on the makeup of the Grand Jury as against the population characteristics of Maui on the basis of groupings according to occupations and income, and offer to prove that if

(Testimony of Harry Tatsumi Oshima.)

the Grand Jury were selected at random that the instant kind of Grand Jury, based as it is on the overwhelming majority of managerial, entrepreneurial and clerical groups as opposed to laboring groups, could happen not more than once in ten million times.

Mr. Crockett: To which offer, if the Court please, we again object.

The Court: Same ruling.

Mr. Resner: Exception, if I may.

The Court: Exception allowed.

Mr. Resner: Turn to Table 7, Mr. Oshima.

The Court: I think we will take a short recess.

(Circuit Court recessed at 2:36 p.m. and reconvened at 2:50 p.m.)

Mr. Resner: Mr. Oshima, would you turn, please, to Table 7?

Witness: Yes.

Mr. Resner: I have given Mr. Crockett a copy. I hand a copy to the Clerk to be marked for identification. [114]

The Court: Next number?

Deputy Clerk: Movants' Exhibit No. 10.

The Court: For identification.

Mr. Resner: Yes. Mr. Oshima, what is Table 10?

Witness: Table 10 attempts—

Q. No, Table 7—I am sorry—No. 10 for identification.

A. Table 7 attempts to give the number of women qualifying for the grand jury panel in Maui County

(Testimony of Harry Tatsumi Oshima.)

if the law permits it. It is an attempt to make estimates. The first line, total number of women in 1940, taken directly from the census—23,782. The next line, 21 years and over in 1940—10,224, taken directly from the census. Next, 21 years and over in 1947—11,947. The method of calculation and the sources again are mainly similar to the method and calculation as indicated in Table 1 where we estimated the number of men qualifying. The next line, Citizens 21 years and over in 1947—9,697. Number educationally qualified—first four years of schooling, 11,426; eight years of schooling, 8,490. No. 6 is the total of female employed—4,208.

Now, there is a slight—I want to call—I want to make a slight change in this table. The next line, female laborers—the word “female” should be indented so that it comes right below the word “total” above. [115] It should not have been so far out. “F” for “Female” should begin right below “T,” so that note No. 6 will cover the three categories indicated in that table at the bottom.

Q. Yes.

A. Female laborers—2,177. That is taken directly from the census for Maui. Female professional and semi-professional workers—661.

Q. Yes. Now that indicates the makeup of the population of Maui with regard to women, is that right?

A. Yes.

Mr. Resner: I will offer Table No. 7 in evidence, if your Honor please.

(Testimony of Harry Tatsumi Oshima.)

The Court: What materiality has it, Mr. Resner, in view of the fact that the Congress of the United States has made the law in regard to jury service down here, and the statute simply copies the Organic Act.

Mr. Resner: Well, if your Honor please, we believe that in view of the 19th Amendment to the Constitution of the United States and also the 5th, 6th and 14th Amendments, and read in the light of *Ballard vs. United States of America*, that this is material.

The Court: I can't see, really, the materiality of the factor. It is quite possible that even were women allowed to vote that there might be a connection with sex relieving the women in that connection from [116] the duties required in the jury service, an obvious basis for distinction in requiring service. Regardless of that and in view of the fact that the Congress has seen fit not to include it in the jury qualification when it went into the matter of amendment as to voting—I can't see, frankly, the materiality of it.

Mr. Resner: Does your Honor have in mind when it was the subject of legislation by Congress, does your Honor have in mind the Organic Act?

The Court: I have in mind the Organic Act which makes the qualification of juries a male citizen. In other words, our statute is simply a copy—the Territorial statute in that qualification section is simply a copy of the Organic Act.

(Testimony of Harry Tatsumi Oshima.)

Mr. Resner: Our legal point is this, if your Honor please. The Organic Act was adopted in 1903. The suffrage amendment was adopted in 1920 and superceded and controlled all prior statutes. When the suffrage amendment was adopted, all statutes that existed prior thereto which defined qualification for different kinds of activity stemming from the right of a person being an elector have to be reread, and where the word, "male" appears, it must include the word, "female."

The Court: Well, I am sorry, I can't go along with that kind of reasoning. The Act would have to be amended specifically to include that. The mere fact that a person is entitled to vote doesn't carry with it all the other obligations that a voter does have unless the Congress sees fit to impose it on us.

Mr. Resner: Also under the 5th and 6th Amendments to the Constitution of the United States as construed in *Ballard vs. United States*, No. 7 for the 1946 October Term, Mr. Justice Douglas speaking for the Court, it is held that the exclusion of women from a grand jury is a deprivation of due process of law—and the 5th and 6th Amendments are applicable to the Territory.

The Court: I don't so read the statute.

Mr. Resner: The 5th and 6th Amendments are not applicable to the Territory?

The Court: They are applicable. Don't misconstrue my statements, Mr. Resner. Your intellect jumps around the bush very fast. I said I don't

(Testimony of Harry Tatsumi Oshima.)

so construe the statute in connection with that decision that it requires ipso facto—that the amendment ipso facto carries with it an amendment of the Organic Act so that the provisions there without proper legislation by Congress can be changed.

Mr. Resner: Your Honor, I make my point because [118] obviously, among other things, we are making a record here, and the situation presented to this Court will unquestionably in one form or another be reviewed by some appellate court.

The Court: I haven't any doubt about it and it doesn't worry me one bit. I hope you do have it reviewed if it becomes a point to. The Court doesn't wish to go into the woman question because of the fact that this Court is bound by the Organic Act, and until the Organic Act is amended, this Court must abide by its terms.

Mr. Resner: All I can say is——

The Court: Does Counsel for the Prosecution desire—I don't want to forestall your rights.

Mr. Crockett: The Prosecution does not desire it, if the Court please. There is a further objection that—that none of the defendants are apparently women. The Supreme Court of the United States has held in many cases that in order to avail themselves of this particular objection that a certain class has been excluded, they have to be members of that class. In other words, there being no women defendants in this case, they are not in a position to raise the question that women have been excluded from the Grand Jury.

(Testimony of Harry Tatsumi Oshima.)

Mr. Resner: The Ballard case doesn't so hold. In fact, it directly disputes Mr. Crockett's statement.

The Court: The objection is sustained.

Mr. Resner: We take an exception, if your Honor please.

The Court: Exception allowed.

Mr. Resner: And I assume the Court will take judicial notice of the fact that Counsel will stipulate that on the Grand Jury of the Territory there are no women.

The Court: I think that is obvious.

Mr. Resner: Well, I want the record to show it. I think it is obvious too, but I want nothing for granted.

The Court: The Court will make it a part of the record, Mr. Resner, that the Grand Jury as constituted here or the panel as constituted here has been an attempt to follow out that qualification at least which requires that it be composed of male citizens and that there are no female persons included on it in violation of the Organic Act.

Mr. Resner: I should like to offer to prove, then, the matters contained in Table 7, if your Honor please, with the questions and answers allowed.

The Court: The offer is dealt with in the same way as the exhibit itself. [120]

Mr. Resner: I thereupon take an exception.

The Court: Your exception is noted.

Mr. Resner: That completes the direct examination.

(Testimony of Harry Tatsumi Oshima.)

Cross-Examination

By Mr. Crockett:

Mr. Crockett: Mr. Oshima, in respect to your Table 1, the portions showing the caucasians on the jury panel, how did you determine who were caucasian and who were non caucasians?

Witness: This was determined on a special investigation conducted by myself, writing questionnaires and asking people who live on Maui what their information indicates the racial background is.

Mr. Crockett: May I have the list of the jury panel please? Showing you—this is the jury panel which has been offered in evidence as an exhibit by the Court. Will you go down the list and indicate whom you included as caucasian, beginning with the first name?—I just wonder—to save time—we have this other one. I just wonder if we should put this in the record.

Mr. Resner: I think, if your Honor please, that Mr. Oshima can use his sources which he has with him in order to answer Mr. Crockett's question. He has the results of his investigation in his hand.

The Court: He has been asked the open question— [121] which ones he characterized as caucasian.

Witness: William S. Burns—shall I read it as I go down, checking off my list?

Mr. Resner: If your Honor please, may I suggest that Mr. Oshima do it alphabetically down the list?

(Testimony of Harry Tatsumi Oshima.)

The Court: If he has his material.

Mr. Resner: If you will go down the list—A, B, C,—Mr. Oshima.

Witness: Samuel Ambrose—oh, this is for the 1947 panel?

Mr. Crockett: Just the 1947 panel.

Witness: Ray M. Allen.

The Court: Just a minute. The answers you have heretofore given, you are withdrawing that and starting over so I can——

Witness: Yes, I am starting again. Edward H. Baldwin. Richard H. Baldwin. Edward S. Bowmer. Frank W. Broadbent. Robert P. Bruce. Alfred S. Burns. Gottlieb Z. Coleman. Jack Costa. Stanley E. Elmore. Allan H. Ezell. James J. Fleming. Glenn H. Fredholm. Paul A. Haygood. Andrew Moodie. Charles E. Morris. Edmund Nunes. Winford W. Percy. Paul R. Reinhart. Louis M. Sequeira. Albert G. Simpson. Joseph H. Trask. Albert D. Waterhouse. That is all. [122]

Mr. Crockett: According to the list you have given us, Mr. Oshima, there are only 24 names in the record. Your schedule shows 28. Will you pick out the other four?

A. May I see my cards over there? I don't think this typed list is——

(Witness leaves stand to get brief case and resumes stand.)

Shall I go over the list again—faster this time? You can check it with your tabulation there. Ray

(Testimony of Harry Tatsumi Oshima.)

M. Allen. Edward H. Baldwin. Richard H. Baldwin. Edward S. Bowmer. Frank W. Broadbent. Robert P. Bruce. Alfred S. Burns. Gottlieb Z. Coleman. Jack Costa. Manuel De Ponte. E. Stanley Elmore. H. W. English. Allan H. Ezell. Manuel M. Feiteira——

The Court: Texeira?

Witness: Feiteira. James M. Fleming. Glenn H. Fredholm. Paul A. Haygood. Andrew Moodie. Charles E. Morris. Edmund Nunes. Winford W. Percy. Herbert S. Peterson. Paul R. Reinhart. Ernest Rezents. Louis M. Sequeira. Albert G. Simpson. Joseph H. Trask. Albert D. Waterhouse.

Mr. Crockett: In your Table 1, you refer to registered voters as 6,728. Is that correct?

A. Yes.

Q. And then referring to Table 3, you have a total of [123] 21,865 employed workers by major occupations.

A. That's right.

Q. That includes males and females, is that correct?

A. That's right.

Q. And then the next column, you have 17,657 including only male.

A. Yes.

Q. Now how do you explain—what is the difference between the figure 17,657 of male employed workers and the 6,728 registered voters?

A. Well, several of them—one category will be non-citizens, aliens and native Filipinos who will not come under Table 1, but will come under Table 3. Another category will be those—that number which

(Testimony of Harry Tatsumi Oshima.)

I estimate will be unable to meet the language qualification. And the third number will include those who are over 60.

Q. In other words, the 17,657 include aliens, as well as citizens. Is that correct?

A. That's right.

Q. And includes persons over 60, as well as those under?

A. Yes, that's right.

Q. And includes persons who might not meet the educational qualifications?

A. That's right.

Q. And you haven't made any table or study as to what [124] proportion of the total working population would be disqualified on account of those factors?

A. Yes, I have. If you will note on Table 3, note 2, footnote 2 after—the sentence beginning after Class 9. I am reading from there: (reading) “From these the number of these meeting the citizenship and educational qualifications are the following: In general, Class 1-4, together with foremen and own-account workers”—who are entrepreneurs—“in the other categories have about 3,748 qualifying while Class 5-12 have about 9,070 qualifying.” And I have here, “See Note 13 under Table 4.” So I will go to Table 4.

Q. How did you determine how many should be deducted in order to arrive at your figure?

A. I go to Table 4 on that point—Note 13, Table 4. Now, from Table I we obtained the other 12,821 citizens and 14,022 with four years of schooling. That is an estimate I derived from Table 1.

(Testimony of Harry Tatsuni Oshima.)

Now, if all non-laborers are assumed to be citizens—I am making a general assumption there, but assuming that professional and semi-professional workers, managerial and supervisory employees, government officials, clerical, sales and kindred workers—all of these individuals I assume to have met the qualification with respect to citizenship and education. We [125] obtained 2,387 such people whom I grant are qualified. We got 2,387. That is the total and the total indicated in the second part of Table 4 in the last column. Now that total will be deducted from the other total, 12,821 citizens, but in addition to the 2,387 we must subtract 1,364 who are from the entrepreneurial or the first part of Table 4—Note No. 4, employers and own-account workers. They are people who are qualified for jury service—namely from the viewpoint of citizenship and education. I estimate that to be 1,364. Such entrepreneurs, many of them, many of the 1,874—which is the total number of entrepreneurs—I assume, by means of certain methods derived from the Census—many of them are Japanese and a few Filipinos so that they will not qualify from the point of view of citizenship. From 1,874, 1,364 are assumed to be citizens. That plus the previous total, 2,387, minus from 12,821 citizens who are assumed to have schooling, gives us 9,070 qualified laborers. I am just reading from Note No. 13, Table 4.

Q. The percentages that you gave in the column on Table 3 saying, “After Deductions For Male

(Testimony of Harry Tatsumi Oshima.)

Non-Laborers," the percentages are based upon the totals in column 2 under the heading, "Male"?

A. May I have the question again, please?

(The question was read by the reporter.)

A. Column 3 is the panel members in 1947? I am not sure exactly—you are referring to Table 3, is that right?

Q. Yes, Table 3.

A. And column 3—panel members in 1947?

Q. No, Table 3, as I read it, you have it, "Distribution of Employed Workers by Major Occupation Group in the Population and in the Panel."

A. Yes.

Q. And then in the first two—third column.

A. Yes.

Q. You have a heading, "After Deductions for Male Non-Laborers from Classes 4-12%."

A. No, four to twelve. The percent belongs to the column—to the head of the column right below. Classes 4-12.

Q. My question is—what are those percentages based upon? That is, which figures? The one after deductions, corrections are made?

A. Yes, after the deductions are made so that they are supposed to represent, especially for Classes 5 to 12, non-laborers—they are supposed to represent laborers for Classes 5 to 12.

Q. You have a total in that column of 13,967 persons.

A. That is inclusive of Class 1 to 4, inclusive.

(Testimony of Harry Tatsumi Oshima.)

Q. Well, again, how do we account for the difference between 13,967 persons and only 6,728 voters? [127]

A. Well, as I said, the comments I just made for the previous column would be perfectly—will apply. Oh, I see what you mean. The total of 13,967 is a total that includes not only classes 5 to 12 but—the table is badly made, I must say. It will include the figures given in the third column—plus 556. Where the dash is, 556 should be there. 468 where the dash is. 681. 1,122. The reason I put a dash instead of a figure there is that that column is just for laborers, and these people are not laborers. And the total is a mistaken total—supposed to apply for all that category—each of the twelve categories.

Q. That isn't exactly what I am trying to get at, Mr. Oshima. I am trying to arrive at an understanding—that is, comparing the figure on your Table 1 where you say we have registered voters, male, 6,728, and when you say the total laborers are 13,967—does that figure 13,967 include citizens and non-citizens, or is it limited to citizens and other persons who would be otherwise qualified for jury duty?

A. No, it includes non-citizens also for that table.

Q. So then the percentages that you have set alongside there are not a fair comparison because the percentages likewise include persons who would not be qualified for jury duty. [128]

(Testimony of Harry Tatsumi Oshima.)

Mr. Resner: I object to that question as being immaterial in this sense—that this table is directed to a different proposition than the other table. The first table has reference to a cross section of the voters. This table has reference to a cross section of the community in the light of announced decisions of the Supreme Court. There are two separate tables there, two separate propositions.

The Court: Counsel is entitled to cross-examine to show the character and what the statistician is trying to testify to in this court.

Witness: May I continue that statement?

Mr. Crockett: Yes, continue the answer.

Witness: I want to clarify that. That total, 13,967, represents non-citizens and people who may not have qualification from the viewpoint of education. It will contain also native Filipinos, that 13,967—so that it is not a total of qualified people.

Q. Then my further statement was—then the percentages which are shown alongside those figures are not a true picture of the percentage of persons qualified for jury duty.

A. Those percentages are not supposed to be for qualified for jury duty. The percentages are to indicate the heading of that total.

Q. Now, where did you get your information as to the [129] occupations so as to make out the figures contained under the heading, “Panel Members in 1947” on Table 3?

A. Most of the—about 80 to 90%, estimated—

(Testimony of Harry Tatsuni Oshima.)

most of the members on the panel from, in this case 1947, practically all of them, I would say, were listed in the directory—Polks' Directory of 1939-1940 and Polks' Directory of 1940-1941 in the section, Molokai, Lanai and for Maui—Island of Maui.

Q. Do you have the name of Manuel Ferreira, Jr. on your cards?

A. I have no—Feiteria, Manuel M.

Q. Who were the two persons you listed as farmers and farm managers?

A. Ray M. Allen, manager of Wailuku Sugar Company. I have one person listed.

Q. One person, pardon me. A. 2%.

Q. Where did you list Charles E. Thompson?

A. He, according to my information, is a poultry farmer—poultry farm owner, and also a rancher. Consequently, he comes under No. 3—Class No. 3—proprietors.

Q. And you have listed as "Craftsmen, foremen and kindred workers"—who is listed under that heading?

A. Eugene K. Ayers who, according to my information, is a painter for a contractor. [130]

Q. Where did you list Mr. Anthony Tam?

A. Mr. Tam is classified in 3, proprietor—cattle raiser.

Q. Do I understand that all independent business men are included under your third classification of proprietors, managers and officials?

A. No. This table is mainly a table of occupa-

(Testimony of Harry Tatsumi Oshima.)

tional classification. Now if a person is a carpenter with a carpenter shop, he will be coming under—if he is the owner of the carpenter shop, he will be coming under Class 5—Craftsmen, foremen and kindred workers.

Q. If he is a store owner, where would he come?

A. Then he would come under 3.

Q. Where did you classify Mr. Costa?

A. Mr. Costa comes under 3—superintendent of a mill power plant from H. C. & S., my information tells me.

Q. And Mr. Ito—Roy Tatsumi Ito?

A. He comes under 4—clerical work.

Q. And Toshio Onuma?

A. He is the person who is listed for No. 9—farm laborers and farm foremen. There is one individual listed there.

Q. Farm laborer, did you say?

A. No, farm foreman. [131]

Q. Isn't the word, as a matter of fact, a research worker?

A. My information says Toshio Onuma is a luna of the harvesting department.

Q. Where did you classify Mr. Rezents?

A. Operative and kindred workers—Class 6. Locomotive fireman.

Q. And Manuel Ferreira, Jr.—do you have that name?

A. I have Feiteira—I don't have Manuel Ferreira.

(Testimony of Harry Tatsumi Oshima.)

Q. Correia.

A. Oh. He comes under—also No. 6—operatives. Carload operator—cane loader operator, I am sorry. Cane loader operator, Pioneer Mill.

Q. In regard to Table No. 5, where this second group of columns show a total of 17,657, does that figure also include persons who are not qualified under the statute to serve as jurors? A. Yes.

Q. And the percentages computed are based upon those—the total that you have in that column?

A. Yes.

Q. So that that also does not show a direct picture of the qualified persons? A. Yes.

Mr. Crockett: That is all. No further questions.

Redirect Examination

By Mr. Resner:

Mr. Resner: Mr. Oshima, with regard to the question that Counsel just asked you what is the purpose of showing that kind of comparison, Mr. Oshima?

Mr. Crockett: To which we object, if the Court please. I submit it is a question for argument rather than for the witness to show what the purpose is of——

The Court: I think we will get further to let the witness do the arguing than to have both Counsel at the present time.

Mr. Crockett: I withdraw the objection.

Witness: The purpose is not so much to give a qualified—a representation according to the quali-

(Testimony of Harry Tatsumi Oshima.)

fied population. Oh, the purpose of that column mainly was to get to the qualified—the next column there. The first column—the purpose of the first column for classification purposes was to indicate the proportion in the total employed population, Table 5. The purpose of the second column was to get at the third column—qualified.

Q. Well, the second column represents males, is that correct? A. Yes.

Q. And the third represents qualified persons in the population?

A. Males, yes. Male and other qualifications.

Q. That means qualified for jury service. It does not mean that they have all registered as voters. A. That's right.

Q. When you say qualified, you mean male, over the age of 21 and under the age of 60, possessed of the minimum educational requirement?

A. Yes.

Mr. Crockett: If the Court please, may I be permitted to ask the witness one more question regarding a figure in that column?

The Court: Counsel has opened it up, you can cross-examine.

Mr. Resner: I don't understand, your Honor. Who is supposed to ask the next question?

The Court: Are you through? I understood you were through. If you are not through, go ahead. I am not trying to cut you off.

Mr. Resner: I didn't quite understand. I think that is all, your Honor.

(Testimony of Harry Tatsumi Oshima.)

The Court: Any further recross?

Mr. Crockett: Yes, if the Court please.

Recross-Examination

By Mr. Crockett:

Mr. Crockett: Referring to—on Table 5, Mr. Oshima, you have the figure 12,669, under the heading, “Qualified.” What do you mean by that qualified? [134]

Witness: That is qualified from a viewpoint of sex, from the viewpoint of education, from the viewpoint of age.

Q. Does that include persons who are not citizens as well as persons who are citizens?

A. No—from the viewpoint of citizenship.

Q. Well, how is it that there is a discrepancy again or a difference again between the 12,669 persons there and the 6,728 persons shown as registered voters and citizens on Table 1?

A. Well, the difference is explained by the—that these figures are as of—well, supposed to be for 1947. The registered total is for 1946. Now, at the rate of about—I would estimate at the rate of about 1,000 to 2,000 qualified people can be roughly off-hand assumed to be coming of age for registration. Secondly, as you know, there are a great number of people who are qualified to register but are not registered.

Q. Isn't it a fact that so far as you know, the registered vote—well, of 1946, just about October of

(Testimony of Harry Tatsumi Oshima.)

last year, that the last registration closed? Isn't that a fact?

A. I am not sure whether it was October or the middle of 1946, but about around there.

Q. You would estimate that there is a total—a difference of 6,728 and 12,265 persons as new voters and [135] persons who have not registered to vote among the males?

A. Yes, and certain miscellaneous groups.

Q. Why is there a difference between that total, 12,265, and the total you showed on Table 3 of 13,967?

A. 13,967? You don't have in the total for Table 3, you don't have the entrepreneurial class—I mean the total for No. 5 doesn't contain the entrepreneurial—just a minute—I am sorry. As I said, the Table 3, I think—I am not—I have not made myself clear enough. That Table 3 total, 13,967, is not a total which indicates the qualified male population for jury service. That is not a total which indicates qualification.

Q. Then you say that the Table 5 total shown there is the male population qualified for jury service?

A. Yes, in the entire population.

Q. And as of what date were those figures?

A. That is supposed to be for 1947, middle of 1947.

The Court: Are you aware that the drawing of this 1947 grand jury doesn't come in 1947, but has to be published before 1947 out of 1946 activity?

(Testimony of Harry Tatsumi Oshima.)

Mr. Resner: If your Honor please, I don't think that is particularly material. What the cases say—the grand jury must be a cross section of the community [136] and a representative grand jury.

The Court: That is very true, but you are questioning a witness here on statistics who is describing statistics for the very year after the grand jury has to be drawn. I want the record to be clear on that.

Mr. Resner: If your Honor please, I think the witness has testified with regard to the percentage of error.

The Court: That doesn't meet my point. The total figures he has used for 1947 are an absurdity in view of the fact of the statutory duty that the Jury Commissioners act before 1947. I want the record to be clear upon that point, Mr. Resner.

Mr. Resner: I will take an exception to your Honor's statement in that respect, because as I read the cases in the law, what we are concerned with is that the grand jury be representative and a cross section, and if the population has not changed appreciably between 1946 and 1947, then the statistical information given is pertinent.

The Court: I think the record is pretty clear upon the point that we are driving at—that this witness is giving 1947 figures which the Jury Commission is supposed to have anticipated when they drew a jury in 1946 is the point I am making. [137]

Mr. Resner: My point is that in 1946 and 1947

(Testimony of Harry Tatsumi Oshima.)

there is no appreciable change because the population is stable.

The Court: The witness has just said he has estimated an additional number of voters coming into the picture.

Mr. Resner: Yes, but the population remains stable even though more people come of age.

The Court: I won't argue, but I want the record to be clear upon what has happened.

Mr. Crockett: We have no further cross-examination.

Re-Redirect Examination

By Mr. Resner:

Mr. Resner: Do you want to clarify that testimony, Mr. Oshima?

Witness: Yes. Let's assume that this should be brought back to 1946 according to the statement of the Judge. I would say that as far as the percentages are concerned, the effect upon the percentages which are in question, I think although the absolute total might have to be deducted for 1,000 or 2,000, as far as the relative percentages I don't think there will be any difference.

Q. On what basis do you make that statement?

A. I make that statement because it is a fair assumption that from year to year the number of ratio or [138] percentage or proportion of voters coming of age will be more or less roughly the same for these different types of categories indicted on Table 5.

(Testimony of Harry Tatsumi Oshima.)

Q. That explains your answer? That completes your answer?

A. Yes, taking into consideration the statement of the Judge—that point he made there.

Mr. Resner: That is all at this time from this witness.

(Witness excused.)

The Court: Well, it is so near four o'clock.

Mr. Resner: I wanted to recall Mr. Reinecke for questioning. It won't take more than five minutes, and he wants to return to Honolulu.

The Court: Make it speedy. The Court is closing at four o'clock. Go ahead; put him on.

JOHN E. REINECKE,

having been previously sworn, resumed the stand and testified as follows:

Further Direct Examination

By Mr. Resner:

Mr. Resner: Mr. Reinecke, did you have occasion at my request to check the composition of the current Grand Jury panel of 50 as against connections with the various firms that you mentioned about?

Witness: I have done so, yes. [139]

Q. And what does your comparison show in that regard?

A. I find out of the 50 persons, those who are owners, managers, supervisors, foremen or person-

(Testimony of John E. Reinecke.)

nel workers in the dominant firms comprise 27 persons.

Q. Out of the 50? A. Out of the 50.

Q. And you have the firms with which they are connected? A. I have.

Q. Broken down into numbers?

A. Broken down into numbers, yes.

Q. Would you give that information?

A. Bank of Hawaii, one. Baldwin Packers, Limited, two. California Packing Corporation, three, one of whom is employed also by Libby, McNeill & Libby. East Maui Irrigation Company, Limited, two—one of whom is also connected with Wailuku Sugar Company. Haleakala Ranch, Limited, one. Hana Hotel, one. Hawaiian Air Lines, one. H. C. & S.—that is Hawaiian Commercial & Sugar Company, four. Hawaiian Pineapple Company, two. Kahului Railroad Company, two. Maui Agricultural Company, Limited, four. Maui Electric Company, Limited, one. Ulupalakua Ranch, one. Von Hamm Young Company, Limited, one. And Wailuku Sugar Company, one. That is 27 without duplicates. [140]

Q. Very well. Now, Mr. Reinecke, turning to another point—with regard to the publication of "Labor in the Territory of Hawaii," year 1939, you have indicated that the pertinent portion thereof—there is part of your testimony—is pages 196 to pages 198 under the chapter 25, "The Organization of Management." Is that correct?

(Testimony of John E. Reinecke.)

A. That is correct.

Q. I show this to Counsel.

(Counsel for Movants showing to Counsel for the Prosecution.)

The Court: I think Counsel can examine that during a recess in view of the witness' answer.

Mr. Resner: All right. The volume which Mr. Crockett holds in his hand, I think is the document for which we saved number 3 for identification. I am going to file it with the Clerk.

The Court: I understand the pages you are referring to are the pages you have just now made of record.

Mr. Resner: That is correct. I am filing the whole volume for identification, having offered the entire volume, and I am also going to file with the Clerk Lind's "An Island Community," for which we saved number 4 for identification.

The Court: It may be filed for identification.

Mr. Resner: That is all, your Honor, unless there are questions. [141]

Mr. Crockett: I have no questions.

The Court: We will take our adjournment until tomorrow morning at nine o'clock.

(Second Circuit Court adjourned at 3:55 p.m.) [142]

Tuesday, September 16th, 1947—9:00 a.m.

Deputy Clerk: Criminal No. 2412—Territory of Hawaii vs. Abraham Makekau, et al., defendants.

The Court: Mr. Clerk, for the purpose of the record, I wish you would call the names of the defendants so that we can see how many of them are present. I would like to have the defendants who are called respond so that their presence can be registered.

Deputy Clerk: Diego Barbosa?

(Defendant rises.)

Deputy Clerk: John Maile?

(Defendant rises.)

Deputy Clerk: Victor Degamo?

(Defendant rises.)

Deputy Clerk: Harry Kapena Kaopuiki?

(Defendant rises.)

Deputy Clerk: Isami A. Nitta?

(Defendant rises.)

Deputy Clerk: Ah Sing Ah Ho?

(Defendant rises.)

Deputy Clerk: James Kia Aikala?

(Defendant rises.)

Deputy Clerk: Shigeru Yagi?

(Defendant rises.)

Deputy Clerk: Basiliso Arruiza?

(Defendant rises.) [143]

Deputy Clerk: Midori Oda?

(Defendant rises.)

Deputy Clerk: Shigeyuki Matsuura?
(Defendant rises.)

Deputy Clerk: Abraham Makekau?
(Defendant rises.)

Deputy Clerk: Elpidio Siruet?
(Defendant rises.)

Deputy Clerk: Mariano Baldua?
(No response.)

Deputy Clerk: Narcisso Sipe?
(Defendant rises.)

Mr. Resner: I understand, your Honor, he is the one who is ill—Baldua.

The Court: Which one?

Mrs. Bouslog: Mariano Baldua.

The Court: Let the record show that the names having been called, the rest of the persons by name have identified themselves with the exception of the one indicated as being in the hospital.

Deputy Clerk: Narcisso Sipe?
(Defendant rises.)

Deputy Clerk: And Antonio Mendes?
(Defendant rises.)

The Court: You may proceed.

Mr. Resner: I should like to offer into evidence at this time the "16th Census of the United States" for [144] 1940—"Population—Second Series—Characteristics of the Population—Hawaii."

Mr. Crockett: What particular tables?

Mr. Resner: Page 28, Table 19, at the bottom

of the page. Table 19, Page 29, at the bottom of the page. Table 21, Pages 33 and 34. And the document as a whole has information on the entire Territory, including Maui, not broken down but which is pertinent in reference to the official government report.

The Court: May the record show from whence it comes?

Mr. Resner: From the United States Government.

The Court: That is very general. The document comes here how? Out of Washington or brought here out of a local library?

Mr. Resner: No. It is a document that we ourselves obtained from the Department of Commerce.

The Court: I want the record to show that, please.

Mr. Crockett: Will the Court allow me to glance over this?

(Counsel for the Prosecution examining document.)

Mr. Crockett: If the Court please, I have no objection to the authenticity of the document. However, I submit it has no materiality in this particular [145] issue, in this case before the Court. The particular table which has been pointed out by Counsel relates to age, race and sex by counties—that is on Page 28. Also the other pages he has referred to—race, age and sex. The Constitution of the United States and the laws of the Territory spe-

cifically prohibit the Jury Commissioners from taking into consideration any matters pertaining to race in the selection of jurors. Consequently, any breaking down of the factors of the county into race, I submit if the Court please, has no bearing upon the issues before this court.

The Court: The Court can't see it at the present time, but will admit the document as part of the record for what it may be worth in the ultimate solution of the case. It may be marked the next ensuing number of the Movants.

Deputy Clerk: Movants' Exhibit No. 11 for identification.

The Court: No, in evidence.

Mr. Resner: In evidence. At this time, if your Honor please, I have offered three exhibits which are numbers 1, 3 and 4, I believe. I wanted to have the record show, your Honor, that we desire to take an exception to the Court's ruling refusing to accept into evidence or receive in evidence defendants' offered exhibits which were marked for identification 1, 2, 3 and 4.

The Court: The exceptions will be noted.

Mr. Resner: And with regard to Mr. Reinecke's testimony, if your Honor please, so the record will be clear in that regard, I desire—may I make an offer of proof on certain matters which we desire to prove which your Honor felt we couldn't.

The Court: The Court never stops Counsel from making an offer.

Mr. Resner: I wanted to be certain before I pro-

ceeded. Through the witness, Mr. Reinecke, if the questions were allowed and the answers permitted, defendants here propose to show that for some years past, for a number of years past and particularly in the years 1945, 1946 and 1947, during which period names were selected for the basis upon which the grand jury was returned, as a matter of fact back as far as 1942 through 1947, inclusive—we would show that the economy of the Territory of Hawaii is in the main owned, controlled and dominated by the firms known as “the five factors”; namely, C. Brewer and Company, Alexander & Baldwin, Castle & Cooke, American Factors, and Theodore Davies. And I would further show that the firms whose names were mentioned by Mr. Reinecke yesterday with whom are connected [147] various members of the instant Grand Jury panel in turn are in the main controlled, owned and dominated by these named “five factors.”

Mr. Crockett: We object to the offer of proof, if the Court please, as incompetent, irrelevant and immaterial. It has no bearing upon the issues of the case. The principal issue being discrimination on the part of the Jury Commissioners, there is nothing showing that the Jury Commissioners are in any way controlled or dominated by the “big five”; the other issue being where certain grand jurors are disqualified by reason of bias and prejudice, nothing showing they have any direct pecuniary interest in any of these “big five” or any person

connected with them; for the further reason that the "big five" are in no way connected with this Prosecution. The Prosecution of the Territory of Hawaii or the Grand Jury are being requested to investigate into certain occurrences which have occurred on account of which these defendants have been committed to await their action. The "big five" are in no way parties to this prosecution.

The Court: Without some preliminary showing of fact that there has been any effort or attempt upon any of the so-called "big five," using Counsel's designation, to influence or determine or coerce the [148] action of individuals upon the panel or individuals as drawn upon the jury panel, the evidence is immaterial and the Court sustains the objection.

Mr. Resner: We take an exception to the Court's ruling, your Honor.

The Court: Exception allowed.

Mr. Resner: At this time we call Judge Wirtz.

CABLE A. WIRTZ

having been first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Resner:

Deputy Clerk: Will you please state your name?

Witness: Cable A. Wirtz.

Mr. Resner: Judge Wirtz, you are the Judge of this district?

A. Normally, yes.

(Testimony of Cable A. Wirtz.)

Q. Circuit? A. Circuit.

Q. Will you tell us what the circuit includes?

A. The circuit includes the County of Maui—the Islands of Maui, Lanai, Molokai, Kahoolawe and Molokini.

Q. Would you say——?

A. I might say with the exception of Kalau-papa, the leper settlement on Molokai, which is a part of the [149] First Circuit by law.

Q. Will you tell us briefly what the jurisdiction of this court is?

A. The jurisdiction of this court covers that entire area.

Q. It covers that entire area geographically?

A. Geographically.

Q. And as a matter of practice—that is, cases entertained, briefly what is the jurisdiction of the court? A. You mean the type of cases?

Q. Yes.

A. All original criminal jurisdiction and all matters of felonies, appellate criminal jurisdiction and misdemeanors, original civil jurisdiction, all matters over \$500, and appellate jurisdiction over matters less than \$500 that might be instituted in the district courts.

The Court: Might I suggest to Counsel that all this stuff is in the statute—to make it a part of the Reporter's job to put into an attempted recollection by the witness is wasting the time of the Court.

(Testimony of Cable A. Wirtz.)

Mr. Resner: Merely preliminary, your Honor. Now, with regard to the selection of grand jurors to sit in the area over which this court has jurisdiction, Judge Wirtz, just what—in what manner and [150] means is the grand jury selected? That is, by whom, first?

A. Yes. The grand jury? You mean the grand jury list or the grand jury?

Q. Grand jury list.

A. The grand jury list is selected by the Jury Commission, of which I am by law *ex officio* chairman. I am required by law to appoint two jury commissioners to serve with me of different political parties. I have appointed Mr. Chatterton, representing the republican party, and Mr. Pombo, representing the democratic party, on the Jury Commission for 1946 and likewise for 1947.

We met, we had over eleven meetings between June 1, of 1946 and the end of the year when we were required to have our list in. These meetings averaged between two and a half and three hours. Questionnaires were sent out to—systematically, questionnaires were sent out to approximately 19 of our 33 eligible precincts, based upon the registered vote. These questionnaires were examined by the Jury Commission and notations made of the contents—tentative lists, qualified, questionable, and another list of those who were exempt, claimed their exemption—and from that, together with our—as far as the other precincts which were not

(Testimony of Cable A. Wirtz.)

thoroughly covered by questionnaires, based upon our personal knowledge of members of those precincts. The jury [151] was selected on the basis of representation in each precinct—at least one juror, based upon the ratio of the registered vote in that precinct, the ratio that that registered vote bears to the entire registered vote of the County. Thus some precincts, small precincts, would have only one juror; others would have as high as four or five. But every—my recollection is every precinct is represented.

Q. In the selection of this grand jury list, did you, Mr. Pombo and Mr. Chatterton participate equally and together at all times?

A. All the selection was done at the eleven meetings I have reference to in which all three of the Jury Commissioners were present and acted in concert.

Q. When was the work of collecting that list completed?

A. Roughly, sometime in December. I don't remember the exact date now.

The Court: Of what year?

Witness: Of 1946.

Mr. Resner: Now, you say that the questionnaires were sent to 19 out of 33 precincts. Was there any reason why the questionnaires were not sent to the other 14 precincts?

Witness: No. It was intended to cover them all systematically. We have old questionnaires of pre-

(Testimony of Cable A. Wirtz.)

vious [152] years, but times and conditions change; and we decided at this 1946 session that we should systematically cover every person that we knew of that might be eligible or qualified to act as a juror. And we selected the precincts to be covered systematically first as those in the outlying areas like Lanai and Molokai and part of the Lahaina section, the Hana section, and some of the upper mountainous sections where we don't have too much personal knowledge as to the citizenry. And also this—Lanai was specifically included because of the changing population. Lanai has the reputation of short-term life over there, so to speak, and the fact that the planters had recently imported a lot of Filipino laborers since the war—not that they would necessarily be eligible, because they are not citizens, but to know how many of the prior registered voters had left and been replaced.

Q. Do I understand that these 19 precincts to which the lists—or, questionnaires were sent are those areas which were outlying then and in which you didn't have too much personal knowledge?

A. That is correct.

Q. With regard to getting names from the 14 other precincts, you had personal knowledge of those precincts, is it? [153]

A. Well, we have—we took the registered voters and went through the names and picked what we thought were qualified persons, and from my personal knowledge of the voters in those precincts,

(Testimony of Cable A. Wirtz.)

plus some instances where we had questionnaires, plus the fact that some of them qualified and served in previous years to our personal knowledge who were qualified as jurors.

Q. If I gave you the precinct list, could you tell us from looking at it which were the 19 precincts that your circularized?

A. Yes, I believe I could. Mr. Bailiff, will you bring me my file there, marked "Judge"—the end one, I think it is. Maybe it is the other end.

(Bailiff handing file to witness.)

Witness (continuing): The first precinct, Lanai—Lanai City. Second precinct, Honolulu.

The Court: What is that name?

Witness: Honolulu. That is beyond Lahaina at the west end of the Island.

The Court: I would suggest for the purpose of the record, and my knowledge being somewhat of a stranger to your distances, and maybe Counsel also, that you give us some idea where they are with reference to where you are.

Witness: Tenth precinct, Waihee. That is just down Wailuku here—next valley—it is hard for me to describe it myself, but it is an area lying just outside Wailuku on the easterly side.

Seventeenth precinct is Keahua—maybe Mr. Bevins could help me try to explain the exact location.

Mr. Crockett: If the Court will permit me, Keahua is a village about two or three miles on the Kihei side, on the south side of Paia, lying on the

(Testimony of Cable A. Wirtz.)

road between Kahului and Makawao—a new precinct, just recently created.

Witness: The eighteenth precinct is Makawao which is above Paia, up on the mountainous area on the easterly slopes of Haleakala. Is that correct, Mr. Crockett?

Mr. Crockett: That is correct.

The Court: About 17 miles from here?

Witness: Roughly. The nineteenth precinct is Haiku, which is in the same region roughly—a little further over, towards Hana side.

Mr. Crockett: About five miles east of Makawao.

Witness: Where the marines had their encampment during the last war. The twentieth precinct is Huelo, which is again a few miles further—going down now towards Hana. Twenty-first precinct is Keanae, which is down again proceeding towards Hana—isolated because of a tortuous road, small rural settlement [155] along the way. Twenty-second precinct is Nahiku—likewise on the way to Hana. The twenty-third precinct is Hana. The twenty-fourth precinct is Kipahulu, which is just beyond Hana. And the twenty-fifth precinct is Kaupo—just at the end of the line, beyond Hana. There is no access from Kaupo except to go through Hana. There is no road entirely around Haleakala as yet, although they are working on it now. The twenty-sixth precinct is Honuaula—roughly the area around Ulupalakua—the mountainous area beyond

(Testimony of Cable A. Wirtz.)

Kula. The next is the twenty-eighth precinct which is the Kihei section—that area roughly where the plane passes in making a landing—that large open bay.

The Court: Southwest from here?

Witness: Southwest from here. The twenty-ninth precinct is Halawa which is the—would be the northerly portion of Molokai.

Mr. Crockett: The eastern end of Molokai—a small little settlement there.

Witness: That is where Mr. Fagan formerly had his ranch on Molokai. The thirtieth precinct is Pukoo—we are moving now from Halawa at the east end towards Kaunakakai.

The Court: On the Island of Molokai?

Witness: On the Island of Molokai. The thirty-first [156] precinct is roughly the center of Kaunakakai. The thirty-second is Hoolehua, which is up from Kaunakakai towards the west end of Molokai—up in the—I don't know whether it is Libbey—I guess both pineapple companies are located there, are they not, Mr. Crockett?

Mr. Crockett: That is correct.

The Court: And the thirty-third is Maunaloa, which is the west end of Molokai. The thirty-fourth precinct is Kalaupapa, the leper settlement. While they vote in this county, still this court has no jurisdiction over that precinct.

The Court: For the purpose of the record, you have been handling files which to the physical eye

(Testimony of Cable A. Wirtz.)

contain folios of documents. Do those represent the questionnaires returned in the proportionate ratio that you have testified to?

Witness: That is correct.

Mr. Resner: What do you mean by “proportionate ratio” that you testified to? I mean everybody—did you send a questionnaire to every registered voter?

Witness: Yes, sir.

Mr. Resner: Did all the registered voters return them?

A. No, they did not.

Q. A number of them did not receive them?

A. Some had moved or were in the army. Some ignored them.

Q. Now with regard to the other 14 precincts, you didn't have questionnaires from those precincts?

A. We had some accumulation scattered through the back files.

Q. From past years? A. From past years.

Q. Now, with regard to the——

A. Those, incidentally, I might state, have been sent and are in the process of being returned now and collected.

Q. You mean the other 14 precincts?

A. The other 14 precincts, so that by the time the Jury Commissioners—after we have been educated on how to proceed and deliberate, we will have questionnaires covering the entire County of Maui.

(Testimony of Cable A. Wirtz.)

Q. When do you expect the 14 to be returned, Judge Wirtz?

A. My secretary could answer that better. I don't know how fast they are coming in. They have all been sent except three, I understand.

Q. When did you start sending these questionnaires to the other 14 precincts?

A. About—roughly about two months ago we started. [158]

Q. Now, as I understand it, then, in collecting this grand jury list of 50, you used the questionnaires from the 19 precincts you have mentioned?

A. Yes.

Q. And then went through the registered voters' list on the other 14 precincts?

A. That is correct.

Q. That is, I assume there is a grand registry of voters on file here in this court house?

A. Not in the court house, but in the County Clerk's office, and we borrowed that register for our meetings.

Q. In going over the registered list of voters, was the selection made at random from that group or made from persons that the three Jury Commissioners knew?

A. No, the selection was made from those we knew were qualified.

Q. What standards of qualification did you use, Judge Wirtz?

A. The standard prescribed by the statute.

(Testimony of Cable A. Wirtz.)

Q. You mean the qualifications of a person being a male citizen, 21 years of age, three years in the Territory, having qualifications for a voter?

A. That's right.

Q. Then that he be possessed of his natural faculties, not decrepit?

A. That's right. [159]

Q. That he be intelligent and of good character?

A. Right.

Q. That he understandingly speak, read and write the English language? A. That's right.

Q. That he be summoned, returned and sworn without reference to race or place of nativity?

A. Right.

Q. Do you know how many names you went over in the grand registry, approximately?

A. I wouldn't remember the figure, but as far as the precincts where we sent out questionnaires, we went over all the questionnaires that were returned. As far as those other precincts, we went right down through the register, read the names until we decided that we had someone who was qualified.

Q. There were many among those persons whom the Jury Commissioners did not know, I assume.

A. I assume, surely. That is the purpose of sending out the system of questionnaires.

Q. And probably among the hundreds that the Jury Commissioners did not know, there were many persons qualified?

(Testimony of Cable A. Wirtz.)

A. I don't doubt that.

Q. Therefore the selection that was made by the Jury Commissioners was in the main from amongst people with [160] whom you had personal knowledge in the sense that the Jury Commissioners and yourself had contact with them in either business or a social manner.

A. Plus the fact that a lot of them had served on prior juries and some of them had full questionnaires and some of them we knew from their prior service, and the fact—I might say Mr. Pombo, I believe, was born and raised on this Island; Mr. Chatterton, a resident for over twenty years on this Island—have come in contact with quite a few people.

Q. Yes, but in the——

A. As you pointed out yesterday, Maui is a small community.

Q. Would it be correct to say, Judge, that in the main those persons who were selected from the registered list of voters by the three commissioners,—yourself ex officio, and the others who were appointed by you, were those with whom the three of you had either business or social contact or knew in that manner?

Mr. Crockett: We object to the question, if the Court please. It has been asked and answered already. The witness has already testified that——

The Court: The objection will be overruled.

Witness: But it all depends what you mean by

(Testimony of Cable A. Wirtz.)

social contacts or business contacts. There are people that we may have met socially—on a purely social basis, we may have met on a purely business basis. There are other people that we know by reputation in the community and have talked to them—maybe met them or chance acquaintances and have been able to talk with them—and others that we have observed from prior jury service.

Mr. Resner: I think there is a file containing some questionnaires on the instant Grand Jury.

Witness: Yes.

(Witness handing file to Counsel for Movants.)

Mr. Resner: I had occasion to go through this and I find that there are 20 questionnaires returned out of the 50 grand jurors on the list. That is correct, isn't it? But before we go into that, I want to point out this now to you and ask if there is not a mistake. I see the first questionnaire is from William Preston Burns—and if I could have the Court's Exhibit 2 on the names of the grand jurors, I don't believe that he is among them.

Witness: That would possibly be an error of one of the clerks.

Mr. Resner: There is a Burns on the Grand Jury.

Witness: What precinct?

Mr. Resner: But it is a different precinct.

Witness: What precinct is he listed for?

(Testimony of Cable A. Wirtz.)

Mr. Resner: I will give it to you in a minute here—Alfred S. Burns, Precinct 2. And the Burns you have there is William Preston Burns. [162]

Witness: I don't know what happened to that questionnaire. Is it in there?

Mr. Resner: Yes. You have two Burns in there.

A. Oh. Yes.

Q. So the first Burns doesn't belong?

A. He is not on the jury list. Instructions to the clerk say simply to remove from the precinct files and place in a separate file for the convenience of counsel and the parties—in the general file all of the questionnaires we have of the men listed on the grand jury and trial jury. This is obviously an error on the part of the clerks.

Q. I thought that was it. With regard to the 30 members of the grand jury first from whom you did not get questionnaires, those were the persons whose names were selected from the list of voters according to the method you have already described for us?

A. That is correct.

Q. You are familiar, I take it, Judge Wirtz, with the list of registered voters as gotten out by the County Clerk's office?

A. I have never seen this list. I just had the book of registration—book with the names of the voters in it.

Mr. Resner: Are you familiar with it, Mr. Crockett?

Mr. Crockett: Yes, I am familiar with it.

(Testimony of Cable A. Wirtz.)

Mr. Resner: I might say to the Court that it is a breakdown according to registration by precincts [163] according to nationality—national origin, apparently, of registered voters, male and female. I should like to offer it in evidence because we could use it with convenience on this examination. Of course, I can call the County Clerk in to identify it. I don't suppose there is any question—it is a public record.

Mr. Crockett: The only question—we have no objection to the total, but this contains a breakdown into nationalities. I don't know on what basis it is made. That part we object to.

The Court: I think before you can use the idea of breakdown, the basis should be clear in the record—how and what standards were used—the witness here having testified that he has no access to, or that access to—

Mr. Resner: I agree, your Honor. I will have to call the County Clerk to establish that to us—merely that this is a point of order, but we can do it another way.

Now, I should like to hand you, Judge Wirtz, the Court's exhibit which is a list of the grand jurors so you will have it in front of you when we go over these names.

(Counsel for Movants handing paper to Witness.)

The first person who appears on the list is Mr. David P. Eldredge. [164]

(Testimony of Cable A. Wirtz.)

Witness: That is correct.

Q. Can you tell us how he was selected for the Grand Jury?

Mr. Crockett: To which we object, if the Court please. I submit if we are going into individual reasons why this person is selected or is not selected or some other, it is just incompetent, irrelevant and immaterial. The only question Counsel is entitled to take up at this time is if some person who was not qualified was picked or selected—to point out why a person who was not qualified was selected. The witness has already testified that the persons they selected were persons qualified for jury service.

The Court: The objection will be overruled.

Witness: David P. Eldredge served as a trial juror in 1946, along with the second on the list—Toshio Onuma. From the voir dire examination had during the trial jury, I was personally satisfied with his qualifications—plus the fact that we have a questionnaire on one Onuma. They were qualified and we saw no reason why they shouldn't serve for Lanai. They were both residents of Lanai.

Mr. Resner: You had a questionnaire on Onuma, Judge, didn't you?

A. Yes.

Q. That was returned in 1946? [165]

A. That is correct.

Q. Do you know where Mr. Eldredge is employed?

(Testimony of Cable A. Wirtz.)

A. I believe he is employed by the Hawaiian Pineapple Company.

Q. As a personnel assistant?

A. I think he is assistant in the Personnel Department.

Q. You have already told us that Toshio Onuma, who is No. 2 on the list—you had a questionnaire on him?

A. That's right.

Q. Alfred S. Burns is third on the list.

A. That is correct.

Q. And you had a questionnaire on him?

A. That's right.

Q. And he is a superintendent at Baldwin Packers, Limited and lives in Lahaina?

A. Yes, but the questionnaire shows that he is otherwise qualified.

Q. What I am—I am just trying to identify the man with the description of the man.

A. That is true. I simply want to point out that the Jury Commissioners at the time they were meeting and selecting this did not presume that there would be a pineapple strike, and consequently had no basis of presuming that anybody along—that we should exclude anybody along that line.

Q. Mr. Burns is a caucasian? [166]

A. I believe so.

Q. According to his questionnaire, of English ancestry.

A. Well, do the questionnaires call for racial extraction?

(Testimony of Cable A. Wirtz.)

Q. Yes. A. I wasn't aware of it.

Q. Nationality of father and mother.

A. Nationality.

Q. Yes, question 7, Judge.

A. Nationality.

Q. Do you distinguish between nationality and racial origin? A. Yes.

Q. Could you explain the difference?

A. Citizenship or national country—nationality. Racial ancestry would be the question—I admit that quite a few of these have indicated in their questionnaires their racial ancestry, but not called for.

Q. The expression “nationality of father”—do I understand the Jury Commissioners wanted information as to the country of which the parent was a citizen?

A. Yes, possibly to check into the first requirement of citizenship.

Q. Wouldn't that appear from question 3, in response to “Where and when born”?

A. That might. [167]

Q. And wouldn't the second question carry it on from there—“If naturalized, when and where?”

A. Yes.

Q. So between questions 3 and 4, you could determine the citizenship of any prospective juror?

A. Unless he was mistaken on a question of law.

Q. That is with regard to naturalization—assuming foreign birth? A. Yes.

Q. What would be the purpose of seeking the nationality of the father and mother?

(Testimony of Cable A. Wirtz.)

A. To determine that question—the possibility of question of citizenship.

Q. You are familiar, of course, with the requirement of the statute that the juror be selected, summoned, sworn and returned without regard to nationality? A. Without regard to race.

Q. Well, as I see it, without reference to race or place of nativity? A. That is correct.

Q. Now, with regard to Mr. Eldredge, to come back to that so we can make our record complete here—do you know that—do you know his nationality or his race, by any chance?

A. I believe he is part Portuguese, part Hawaiian—I am not positive.

The Court: Was that factor taken into consideration in selecting? [168]

Witness: No, your Honor.

Mr. Resner: Toshio Anuma is Japanese?

Witness: I assume from the name.

Q. And employed in the research department of Hawaiian Pineapple Company?

A. If that is what the questionnaire shows. I don't recall off hand.

Q. And his precinct is 1, Lanai?

A. Correct.

Q. David Eldredge is 1, Lanai?

A. Correct.

Q. Mr. Alfred S. Burns is 2, Honolua?

A. That is correct.

Q. Now the next person who appears on the grand jury list is Manuel Correia, Jr.

(Testimony of Cable A. Wirtz.)

A. That is correct.

Q. And he is 3, Mala precinct?

A. That is correct.

Q. He is Portuguese?

A. The name would so indicate—I don't know.

Q. The questionnaire return, I believe, in his name shows that. He is a crane operator, employed by John T. Moir.

A. John T. Moir is manager of Pioneer Mill Company.

Q. Well, then that would mean that he is a crane operator at Pioneer Mill—oh, he says John T. Moir is his superior. [169]

A. Just as Mr. Moir is superior for everybody who works for Pioneer Mill Company.

Mr. Crockett: If the Court please, if Counsel is going to question on the contents of this questionnaire, it would be fair to let the witness see the questionnaire.

The Court: If the witness wants to refresh his recollection, he will ask. I think he is entitled to for that purpose.

Mr. Resner: We can stipulate to that, your Honor. The next person on the list is Roy Tatum Ito whose precinct is 3, Mala, and who is Japanese. Do you know his employment?

Witness: I don't recall.

Q. Do you know whether he was employed in the clerical department of Hawaiian Pine?

A. I don't know. I might state, as I tried to

(Testimony of Cable A. Wirtz.)

state before, that the matter of employment was never a concern to the Jury Commissioners.

Mr. Resner: I might say, your Honor, that in the light of the decisions upon which we rely and in view of the necessity of making a record which we think is a proper one, I am going into these questions at this point—that is the purpose of the examination.

The Court: I have no objection.

Mr. Resner: I wanted to have the Court and also the witness understand—I think Judge Wirtz does know it because we had discussed it at the time the [170] challenge was originally filed, and Judge Wirtz felt he should not sit in the matter since he participated in the selection of the grand jury list, although the record does show, as far as we are concerned, we were perfectly willing to have Judge Wirtz sit on this.

Witness: I might say as far as Ito is concerned, I have a recollection that he had prior jury service—a little more personal knowledge of him by virtue of the voir dire.

Mr. Resner: Edward S. Bowmer, who is No. 6—oh, Mr. Ito didn't have any questionnaire in this file?

A. I don't think so.

Q. No, it isn't in here. No. 6 is Edward S. Bowmer, for whom you have a questionnaire from December 6, 1945, and he is caucasian, is he, to your knowledge?

(Testimony of Cable A. Wirtz.)

A. My recollection of him is that he is, yes.

Q. On his questionnaire, he gives the nationality of his father and mother as English.

A. He likewise had prior jury service in the petit jury.

Q. And he is employed by Baldwin Packers, Limited, as cashier and assistant bookkeeper, according to the questionnaire.

A. If the questionnaire so states.

Q. The next is Ralph O. Cornwell whose precinct is 4, Kam 4th, Lahaina. You have a questionnaire from him [171] which is dated September 4, 1946, and he lists his place of birth as Waikapu, and nationality of father and mother is American, and his occupation during the past five years is the United States Army. Do you know Mr. Cornwell?

A. No.

Q. The eighth on the jury list is Yong Kam Chew, who gives his address as 4, Kam 4, Lahaina. I assume from that name that he is Chinese?

A. Yes.

Q. Do you know his business?

A. Yes.

Q. What is it?

A. Operates a store in Lahaina, grocery store.

Q. And you knew him from personal knowledge?

A. Yes, I was Judge when he was naturalized.

Q. The next is Ray M. Allen, No. 9. His precinct is 6, Wailuku Elementary?

A. Correct.

Q. And do you know his nationality?

(Testimony of Cable A. Wirtz.)

A. Caucasian, manager of Wailuku Sugar Company.

The Court: When you say caucasian, what various peoples conglomerated under such a name are you referring to?

Witness: I would say what the expert termed yesterday as a haole.

The Court: Irish, French, German, English——?

Witness: I really don't know. [172]

The Court: Polish?

Witness: I really don't know, but maybe Mr. Chatterton will know.

The Court: Did you go into that as a jury commissioner?

Witness: No, we did not, your Honor.

Mr. Resner: But on this question of race, the expert yesterday—that is, the description of caucasian is one with which you as a Jury Commissioner could agree—that is, as to what a caucasian and what a non-caucasian is?

A. Well, I don't know. There were two categories given. One excluded Portuguese and Spaniards and Puerto Ricans, and the other one included—so I don't know which——

Q. I think, Judge, that was the difference between a haole and a non-haole that descriptive term came in. But caucasian, generally, would include all the members of the so-called white race?

A. That is correct.

Q. And non-caucasians all others?

(Testimony of Cable A. Wirtz.)

A. That is correct.

The Court: Mr. Resner, there are some matters that Judge Wirtz of this circuit has to attend to in an official capacity and for which I am not the judge. We will taken a ten-minute recess.

(Second Circuit Court recessed at 9:56 a.m.)

(Second Circuit Court reconvened at 10:07 a.m.)

Mr. Crockett: If the Court please, before proceeding I spoke to Counsel for the Defendants just during the recess and asked whether or not it would be agreeable to break the regular order of proof and allow the Prosecution to call four witnesses whom we have subpoenaed who are working men and—not knowing how long the defense will take in the presentation of their case, I had to subpoena them to be present this morning, because in case they were needed, we didn't want to hold the Court up. Counsel informs me it will take quite a bit of time, perhaps all day and perhaps longer. One of the men is from the Island of Lanai and one from Lahaina. The other two are here in Wailuku. And if the Court would be agreeable, I would like to present these two witnesses at the present time just to testify to one particular fact, and that is the fact that their names appear on the list but they will testify to the fact that they are all members of the union—that is, the ILWU. Counsel reminded me there is more than one union, but as far as I know they are all members of the union.

(Testimony of Cable A. Wirtz.)

The Court: Perhaps Counsel is ready to stipulate.

Mr. Resner: This is the only question I had in my mind. Yesterday we asked the Court permission to examine on voir dire the members of the grand jury [174] panel and your Honor indicated you didn't think that proper. And the rule, I assume, would be consistent for both sides. That is, if we are not permitted to examine jurors on voir dire, obviously the Prosecution would not be permitted to do so either.

The Court: The question that you asked was for a general examination on voir dire. The question, as I understand, of the Counsel for the Prosecution is simply to bring out an extraneous fact that does not appear on their questionnaires as to the point that he raises—that they are, if it turns out to be, affiliated with the union. He wants that fact to appear in the record in that respect, and the only way it could be done would be by that way, unless Counsel is willing to stipulate. The general sweeping examination on voir dire that you claim the right to do is something entirely separate and distinct and will meet with an objection by the Court in a proper way.

Mr. Resner: I understand your Honor already ruled on that question.

The Court: I have already given you an advance notice of the fact that I will not permit a general fishing expedition on voir dire, but a spe-

(Testimony of Cable A. Wirtz.)

cific fact that is pertinent to the issue that you have raised on your abstract statistical data as to the situation which does not appear from the [175] questionnaires and would not appear normally in any way—that factor, as explained by Counsel, seems to me to be pertinent. I will meet any other——

Mr. Resner: Well, as long as it works both ways, I haven't any objection.

The Court: The Court isn't taking a one-sided view of this thing, Mr. Resner. As you heard me explain, the one factor that Counsel desires to produce as a matter of record in this matter is the one question as to their affiliation with unions so that it may appear that they are in that occupation and class, if it is pertinent at all. The Court hasn't ruled on that feature at all. If Counsel doesn't want to stipulate to that fact, but yet is willing that they be presented at this time out of order, that is the only thing before the Court at the present time.

Mr. Crockett: May I point out to the Court that the challenge on page 3 in the third paragraph reads: (reading) "In support of this ground of challenge defendants, and each of them, allege and assert that said grand jury and grand jury array is composed almost in its entirety of members of the employer class, and their representatives, agents and servants."

Omitting a portion—"that the said jury commission [176] have systematically, deliberately and

(Testimony of Cable A. Wirtz.)

intentionally selected and chosen members of said employer class and their representatives, agents and servants to serve thereon, and systematically, deliberately and intentionally excluded therefrom and denied membership thereon to members of the working or employee class, and members of trade unions.”

The same thing appears on page 5—that they “have systematically, deliberately and intentionally selected members of the employer class and their representatives, agents and servants to serve upon said grand jury and grand jury array, and have deliberately, systematically and intentionally excluded therefrom members of the working or employee class, and trade unionists.”

So that I submit, if the Court please, in so far as this issue is concerned, the Prosecution is certainly entitled to show that specific persons were included on this list who are, in fact, members of the trade unions.

Mr. Resner: All I had in mind, Judge, is that one of the reasons for which we wanted to call members of the Grand Jury on voir dire was to show their identification with the so-called employer class, their nationality, things of that character which we believe are pertinent in view of Supreme Court decisions on those questions. Now it was on [177] that proposition that I understood your Honor yesterday to rule or to indicate that we could not be permitted to call them, as well as on the other side of

(Testimony of Cable A. Wirtz.)

the question, whether we could examine them for cause on the basis of bias.

The Court: I think there is either a conscious or unconscious misunderstanding being expressed in the record here. The Court's intention—if the Court didn't properly explain, I will try to do it now—is to say to you that a general, open examination on voir dire on questions of unalleged fact of bias and prejudice, that is, only alleged by judicial conclusion, the Court is not inclined at this time to permit. But I did say that in connection with the identification of these persons, it was the Court's information, by the system known by the Court, that questionnaires went out—and other factors of official record are available to the knowledge of the Jury Commission which would disclose the identity of the persons from the standpoint that you are going on; and if not, the Court will take that question up if the factor is necessary to be proved. This particular factor is simply a question, Counsel has said, that goes to that issue which you have raised in your pleading.

Mr. Resner: We have no objection to these witnesses being heard any time, whether in order or out of order. We have no objection. [178]

The Court: Then, Judge Wirtz, will you step down a minute and let's call out of order.

(Witness excused.)

ROY TATSUMI ITO,

having been first duly sworn was examined and testified as follows:

Direct Examination

By Mr. Crockett:

Deputy Clerk: Please give your full name?

Witness: Roy Tatsumi Ito.

Mr. Crockett: Where do you live, Mr. Ito?

A. Lanai.

Q. What is your occupation?

A. Assistant research.

Q. How long have you lived at Lanai?

A. Oh, over two years.

Q. And before that, where did you live?

A. Lahaina.

Q. How long have you been engaged as an assistant research?

A. About over one year.

Q. And what was your occupation before that?

A. I was checker. Before that, I was hired there first as a laborer.

Q. During the year 1946, were you a member of a labor union? A. 1946? Yes.

Q. And are you a member of a labor union at the present time? [179] A. I think so.

Q. What labor union are you a member of?

A. ILWU.

Q. Which particular local? A. Local 152.

Q. Where does that have its headquarters? Or principal office? A. At Honolulu.

(Testimony of Roy Tatsumi Ito.)

Q. At Honolulu. Do you know whether or not you are the same Roy Tatsumi Ito that was included on the list of the Grand Jury? A. Yes.

Mr. Crockett: You are the same. You may cross-examine, Mr. Resner.

Cross-Examination

By Mr. Resner:

Q. How long have you been on the Grand Jury list, Mr. Ito?

Witness: The first questionnaire was sent to me around 1945.

Q. How long have you been serving, however?

A. I didn't serve on the jury. I just filled in the questionnaire.

Q. What was that again?

A. They sent in a questionnaire. I just filled the questionnaire.

Q. But you never served, is that the point? [180]

A. I never served.

Q. How long have you been on the list—did you ever get notified that you were on the list?

A. In 1945 I sent a questionnaire and in 1946, but I wasn't in the jury.

Q. The question I am getting at is did anyone ever notify you that you were a member of the Grand Jury panel or list?

A. Nobody notified me, but came in the newspaper—my name.

Q. Had you ever been called to court and sworn in to serve as a grand juror? A. No.

(Testimony of Roy Tatsumi Ito.)

Q. Are you a member of the ILWU, 152, at the present time?

A. I paid my dues until August, but I don't know if after that—I didn't pay yet.

Q. August of what year? A. This year.

Q. Have you paid them since?

A. Just September—I didn't pay September yet.

Q. But you were a member until August, 1947?

A. Yes.

Q. And you are employed as an assistant research worker at Hawaiian Pine at Lanai?

A. Yes.

Mr. Resner: Thank you, that is all.

(Witness excused.) [181]

CHARLES H. SAKA,

having been first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Crockett:

Deputy Clerk: Will you please state your name?

Witness: Charles H. Saka.

Mr. Crockett: Where do you live, Mr. Saka?

Witness: Wailuku.

Q. What is your occupation?

A. Clerk at the warehouse of the Wailuku Sugar Company.

Q. How long have you lived in Wailuku?

(Testimony of Charles H. Saka.)

A. Approximately four years.

Q. And how long have you been working with the Wailuku Sugar Company?

A. Eighteen years.

Q. And in the present job, how long have you stayed? A. Same job.

Q. Are you a member of any union?

A. I am.

Q. What union are you a member of?

A. ILWU.

Q. What local? A. Local 144.

Q. Where does it have its office?

A. Wailuku.

Q. Are you an officer of the union? [182]

A. Yes, sir.

Q. What office do you hold?

A. Secretary of Unit 3.

Q. Are you the same Charles Saka whose name appeared on the list of the grand jurors returned in this court, do you know? A. I presume so.

Q. Did you see your name published in the paper? A. I did, sir.

Q. And so far as you know, you are the only Charles Saka by that name here? A. Yes, sir.

Mr. Crockett: You may cross-examine.

Cross-Examination

By Mr. Resner:

Q. Have you ever been called and sworn in as a grand juror? A. No, sir.

Q. When did you see in the paper that you were on the list?

(Testimony of Charles H. Saka.)

A. I think on the early part of this year, but I seen it once in the Maui News—I don't recall what issue it was.

Q. Did you ever get one of these questionnaires that has been talked about? A. Yes, sir.

Q. You did get one? [183] A. I did.

Q. When was that?

A. Sometime last year.

Mr. Resner: That is all.

(Witness excused.)

ERNEST REZENTS,

having been first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Crockett:

Deputy Clerk: Please state your name.

Witness: Ernest Rezents.

Mr. Crockett: Where do you live, Mr. Rezents?

Witness: Wailuku.

Q. How long have you lived in Wailuku?

A. Ten months—ten years and nine months.

Q. Where did you live before that?

A. Kahului.

Q. What is your occupation?

A. Locomotive fireman.

Q. By whom are you employed?

A. Wailuku Sugar Company.

(Testimony of Ernest Rezents.)

Q. How long have you been employed in that occupation? A. Same time.

Q. Are you a member of a labor union?

A. Yes.

Q. And what union are you a member of?

A. ILWU. [184]

Q. What local is that? A. 144.

Q. That is the one having its office here in Wailuku? A. Yes.

Q. How long have you been a member?

A. About three years.

Q. Do you know whether you are the same Rezents whose name appears in the grand jury list?

A. I am.

Q. You saw your name in the paper also?

(Witness nodding.)

Mr. Crockett: You may cross-examine.

Cross-Examination

By Mr. Resner:

Q. Have you ever served as a grand juror, Mr. Rezents?

Witness: Yes, I did.

Q. In what year?

A. About three years ago, I think it was.

Q. Did you serve on the present list—this year, 1947? A. No.

Q. Have you ever been called or sworn in this year? A. No.

Mr. Resner: That is all.

The Court: The Court would like to ask a ques-

(Testimony of Ernest Rezens.)

tion. Was there any question on the questionnaire you got seeking to get any information out of you as to whether [185] you were or were not a union man? On the questionnaire, did it ask any such question?

Witness: No.

Mr. Resner: Were you asked the question of your union affiliation at any time, Mr. Rezens, in connection with your service?

Witness: Yes. I would say about two weeks ago a policeman was up my place and asked me if I was a member of the union.

Q. Did he say whether he came to ask you that?

A. He said that he thinks that there would be some cases coming out and he wanted to know if I was in the union or not.

Q. Do you know who that officer was?

A. Yes.

Q. Who was it?

A. I think Viela.

Mr. Resner: That is all.

The Court: Just a minute. Since my question has opened up the subject, I would like to ask another. Were you asked any question of your union affiliation before your name appeared in the paper in the grand jury list?

Witness: Before? No.

The Court: That is all.

Mr. Crockett: That is all.

(Witness excused.) [186]

MANUEL CORREIA, JR.

having been first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Crockett:

Deputy Clerk: Please state your name.

Witness: Manuel Correia, Jr.

Mr. Crockett: Where do you live, Mr. Correia?

Witness: Puukolii, Lahaina.

Q. And what is your occupation?

A. Crane operator.

Q. How long have you lived in Puukolii?

A. Thirty years.

Q. And how long have you been in the work of crane operator? A. Fifteen years.

Q. Are you a member of any union?

A. ILWU.

Q. How long have you been a member of the union? A. Two years.

Q. And are you a member at the present time?

A. Yes.

Q. Are you the same Manuel Correia, Jr. whose name appeared in the jury list—I believe the list was published in the newspaper. A. Yes.

Q. Have you ever served on a jury before?

A. Yes, I did. [187]

Q. When was that?

A. About five years ago.

Q. Do you recall whether it was the grand jury or trial jury? A. Trial.

Mr. Crockett: Trial jury. That is all.

(Testimony of Manuel Correia, Jr.)

Cross-Examination

By Mr. Resner:

Q. Have you ever been called and sworn in on the present grand jury panel of 1947, Mr. Correia?

Witness: No.

Q. Have you ever served as a grand juror?

A. No.

Mr. Resner: That is all.

(Witness excused.)

Mr. Crockett: If the Court please, those are the four witnesses which I wished to present.

The Court: All right, Judge Wirtz.

CABLE A. WIRTZ

having been previously sworn, resumed the stand and testified as follows:

Further Direct Examination

By Mr. Resner:

Mr. Crockett: At this time, if the Court please, I ask that the witnesses be instructed they are excused.

The Court: No further use? The witnesses may be excused from any further responsibility to the subpoena. [188]

Mr. Resner: No. 9 on the list of grand jurors, Judge Wirtz, is Ray M. Allen, whose precinct resi-

(Testimony of Cable H. Wirtz.)

dence is 6, Wailuku Elementary. That is correct, is it not?

Witness: That's right.

Q. Is that correct? A. Yes.

Q. Incidentally, I think I made an error. Mr. Yong Kam Chew—I want to correct it in the record. I think his residence is 4, Kam 4th, Lahaina.

A. I would like to state that it might be somewhat deceiving on these precincts. Some persons are registered in one precinct and live in another.

Q. Can they vote in the precinct?

A. They generally return and vote in the precinct in which they are registered. Some of them have never bothered to change their registration from precinct to precinct.

Q. In the Court's exhibit 1 is listed the names of these grand jurors with the words, "Precinct Residence" used. I assume that means the place of voting?

A. That is the precinct under which they are registered—taken from the register of the Clerk.

Q. Do you know Mr. Allen's business?

A. Yes.

Q. What is it?

A. Manager of Wailuku Sugar Company.

Q. And his race? [189] A. White.

Q. Next is Wai Ken Tom, No. 10—Precinct residence, 6, Wailuku Elementary. I assume he is Chinese? A. I would presume so.

Q. Do you know his business?

(Testimony of Cable H. Wirtz.)

A. No, I do not.

Q. Do you know whether he is a bookkeeper at the Maui Telephone System?

A. I couldn't say.

Q. Next is Mr. Allan H. Ezell. He is No. 11. His precinct residence is 6, Wailuku Elementary. Do you know his race?

A. White.

Q. And his occupation?

A. I am not sure whether he is manager of the airport or—he is some managerial capacity with the Hawaiian Air Lines.

Q. District Manager of Hawaiian Air Lines?

A. That may be it.

Q. Next, No. 12 is—do you know Mr. Ezell personally, Judge?

A. Yes.

Q. And I assume you know Mr. Allen personally?

A. Yes.

Q. Of the previous ten names we have read, how many of them do you know personally?

A. I know Mr. Eldredge. I have met Mr. Bowmer. I [190] know Yong Kam Chew, Mr. Allen, Mr. Ezell.

Q. No. 12 is Louis Sequeira—7, Iao School. What is his race?

A. I am not certain of that. The name might indicate Spanish or a mixture of Spanish races.

D. Do you know his occupation?

A. I am not positive about that either. I think he works for Wailuku Sugar. I may be wrong on that.

(Testimony of Cable H. Wirtz.)

Q. Do you know whether he is in the accessory and parts department—manager of that at Von Hamm Young? A. No, I am not positive.

Q. Do you know him??

A. I believe there are several Sequeira brothers. I don't know which one I have met and talked to.

Q. No. 13 is Winford W. Percy, 7, Iao School. Do you know Mr. Percy? A. Yes.

Q. And what is his occupation? A. White.

Q. His race is white and what is his occupation?

A. He operates a Wailuku appliance store. I think it is called Maui Appliance Company down on Market St.

Q. Here in Wailuku? A. That is correct.

Q. Next is No. 14, Shosaku Nakamoto—7, Iao School. His nationality or his race is Japanese, I assume?

A. Not knowing anything further, that is what I would assume too. [191]

Q. Do you know his occupation? A. No.

Q. My information says he is the manager of the Olympic Market. Do you have any information in that regard?

A. I wouldn't be positive.

Q. Next is No. 15, Irving Maeda—8, Piihana. Do you know his nationality and occupation, Judge?

A. I am not positive, but I would assume from the name that his nationality is Japanese.

Q. And his occupation is unknown to you?

(Testimony of Cable H. Wirtz.)

A. No, I don't know. There are also a lot of Maedas on Maui. I might have met him. I am not sure.

Q. He is a public accountant. You don't know that?

A. I believe there is a maeda that I have met who is a public accountant. This may be the same one.

Q. No. 16 is Joseph H. Trask—8, Piihana. Do you know him? A. Yes.

Q. His race? A. White.

Q. Business?

A. I believe he is manager of a branch of the Bank of Hawaii.

Q. No. 17 is Ernest Rezents. He was the gentleman who was just here and he described himself. Do you know him? A. No, I don't. [192]

Q. I think the record shows that he is white and employed as a fireman. No. 18 is Eugene K. Ayers—9, Papohaku. Do you know him? A. No.

Q. Do you know his nationality or his occupation?

A. That I couldn't be positive about. He has an English name, but it might—my recollection in meeting with the Jury Commissioners—he might have been described as having some Hawaiian blood in him. I am not sure.

Q. I think the questionnaire shows that he says English-Hawaiian, and his occupation, freight clerk, Naval Freight Office.

(Testimony of Cable H. Wirtz.)

A. Well, I don't know the name of the freight office operating now. He was at that time.

Q. No. 19 is Mr. Paul A. Haygood—9, Papohaku. Do you know Mr. Haygood? A. Yes.

Q. What is his race and occupation?

A. He is white and I don't know whether he is manager of the Coca-Cola Bottling Company or the local soda works that markets coca-cola.

Q. No. 20 is Charles H. Saka who was just here. Do you know him?

A. Yes. I didn't know him, but we knew of him—know of his affiliation.

Q. It appears that he is Japanese and employed, I [193] believe, as a clerk with the Wailuku Sugar Company.

A. We knew of his affiliation with the union at the time the Jury Commissioners met.

Q. That he was affiliated with the ILWU.

A. Yes.

Q. You mean he was a union man?

A. We knew of that because he has been quite active—and things that you know in the community.

Q. His address is 10—. A. Waihee.

Q. Waihee. No. 21 is Glenn H. Fredholm whose address is 12, Kahului. Do you know him?

A. No.

Q. Do you know his nationality or race and occupation?

A. I think he is of the white race—I couldn't be positive though. So often those who have white names are a mixture of races in the Islands.

(Testimony of Cable H. Wirtz.)

Q. The information I have—he is haole, employed as superintendent with the truck department of the Kahului Railroad Company. Could that be correct, so far as you know?

A. I think he is employed by Kahului Railroad Company—in what capacity, I do not know.

Q. No. 23 is—No. 22, rather, is H. S. Peterson whose address is 12, Kahului. Do you know Mr. Peterson? A. Yes.

Q. And his race and occupation? [194]

A. White—manager of Puunene Store.

Q. Do you know whether that store is privately owned by one of the companies?

A. I think it is operated as an outlet for Kahului Store—I don't know the tie-up.

Q. No. 23 is Manuel De Ponte—spelled D-e on my list. A. D-u.

Q. And his address is 12, Kahului. Do you know him?

A. There are quite a few Du Pontes on the Island. I couldn't be positive I know this particular one. I have met several.

Q. He is caucasian?

A. Well, I can't be sure. Yes, I think he is Portuguese.

Q. And his occupation is assistant personnel director of the Kahului Railroad Company?

A. I don't know. I am not sure of that.

Q. No. 24 is Frank W. Broadbent—13, Puunene. Do you know Mr. Broadbent? A. Yes.

(Testimony of Cable H. Wirtz.)

Q. And his race and business?

A. White and he is one of the assistant managers, I believe of Hawaiian Commercial and Sugar Company.

Q. No. 25 is Masao Mac Ajifu whose address is—13, Puunene. You know him?

A. At the time the Jury Commissioners met, I didn't. But [195] I have met him because he was drawn and selected for the Grand Jury and was excused by myself. He failed to appear and had to be summoned on a bench warrant, but he is a World War II veteran and has a mental disability which we didn't know of at the time. At the time he left to serve his country, he was in good shape.

Q. Is he employed anywhere now?

A. That I can't say. All I know at the time I excused him the first part of this year, he had a mental disability and was receiving benefits from the federal government.

Q. Do you know his race? A. Japanese.

Q. No. 26 is Mau Hin Edward Alu—13, Puunene. Do you know him? A. No, I do not.

Q. And his race and occupation?

A. That name could be quite a combination. It might be Chinese-Hawaiian. I suspect it to be Chinese-Hawaiian.

Q. Our information is that that is correct—so probably so. He is employed, according to our information, as a machinist journeyman at Hawai-

(Testimony of Cable H. Wirtz.)

ian Commercial and Sugar Company. You don't know whether that is so or not?

A. I don't know.

Q. No. 27 is Jack Costa whose address is Puunene. Do [196] you know Mr. Costa?

A. Yes.

Q. And his race and business?

A. White—I am not sure whether he is retired at the present time or not, but he was employed in some capacity with Hawaiian Commercial and Sugar.

Q. Yes, our observation is he is superintendent at H. C. & S. mill power plant—does that correspond with your knowledge?

A. I didn't know the capacity, but I knew that he was employed by H. C. & S.

Q. No. 28 is James M. Fleming—13, Puunene. Do you know Mr. Fleming?

A. Yes.

Q. And his race and occupation?

A. White and Island manager of the Shell Oil Company.

Q. No. 29 is E. Stanley Elmore—14, Spreckelsville. You know Mr. Elmore?

A. Yes. And this is an illustration I might give you right now. He is registered in Precinct 14, Spreckelsville and was a victim of the tidal wave and has since moved to Kula. His house was destroyed and apparently—I don't know whether he has re-registered or not, but at the time we picked the Grand Jury, he was registered at Spreckelsville.

(Testimony of Cable H. Wirtz.)

Q. And what is his race and occupation?

A. White and manager of Valley Isle Motors, Limited. [197]

Q. No. 30 is Albert D. Waterhouse—15, Lower Paia. Do you know Mr. Waterhouse?

A. Yes.

Q. His race and occupation?

A. White, and I don't know in what capacity but he is employed by Maui Agricultural Company.

Q. Would he be the irrigation superintendent at Maui Agricultural?

A. He might, but I am not positive.

Q. Next is 31, Manuel Feiteira—15, Lower Paia. Do you know him? A. No.

Q. And his race and occupation?

A. I would assume white—occupation, I have no knowledge.

Q. We have that he is a head time keeper at Maui Agricultural Company.

A. I have no way of knowing.

Q. No. 32 is Andrew Moodie—16, Upper Paia. Do you know him? A. Yes.

Q. And his race and occupation?

A. White and manager of Paia Store in Paia.

Q. No. 33 is Robert P. Bruce—16, Upper Paia. Do you know him? A. Yes.

Q. His race and occupation?

A. White and manager of East Maui Irrigation Company. [198]

Q. No. 34 is H. W. English—16, Upper Paia. Do you know Mr. English? A. No, I do not.

(Testimony of Cable H. Wirtz.)

Q. Do you know anything about him? His race or occupation?

A. No present recollection. Of course on all these, I might have some recollection if it appears on the questionnaires, but I have no recollection at this time.

Q. Apparently he never received a questionnaire, according to the information we have here. That is, he is white and supervisor of the Maui Agricultural garage—and manager of the Maui Amusement Theatre at the present time.

A. That may well be. I can't be positive about it.

Q. No. 35 is Gottlieb Z. Coleman—16, Upper Paia. Do you know Mr. Coleman?

A. No, not personally.

Q. And you don't know his occupation?

A. No.

Q. The information we have is that he is a white person and that he is the floor department head of the trucking department of the Maui Agricultural Company. You don't know? A. I don't know.

Q. No. 36 is Edmund Nunes—17, Upper Paia. Do you know him? [199]

A. No, although it is possible I might. There are a lot of Nunes on the Island. I might have met him.

Q. He gives his apparent nationality as Portuguese and his occupation as district overseer for Maui County.

(Testimony of Cable H. Wirtz.)

A. That is quite possible.

Q. Let me ask you this question—where a person would give his parents' nationality, did that mean that such person is considered by himself and others as Portuguese as something different in the community than an ordinary caucasian?

A. As a matter of fact, I don't think we ever took into consideration these racial questions. We looked purely to the qualification of the juror.

Q. Is there any particular reason why in the public records in the County a person should be identified as a Portuguese rather than as a caucasian?

A. I believe there is something on that, I am not positive. But there are some organizations where some persons are qualified Portuguese in the non-caucasian category. I believe your expert mentioned that yesterday.

Q. He said it is a part of the mores of the Territory that they were regarded separately under some circumstances.

A. Yes, but I don't know what the basis is or the reason.

Q. Probably has some historical origin, would you say so, Judge? [200]

Witness: I won't venture.

Q. The next, No. 37, Mr. Richard H. Baldwin—18, Makawao. Do you know Mr. Richard Baldwin?

A. Yes.

Q. And his nationality or his race and occupation?

(Testimony of Cable H. Wirtz.)

A. White, and I believe he is the manager or assistant manager of Haleakala Ranch.

Q. Yes. No. 38, Anthony A. Tam—18, Makawao. Do you know him?

A. Only through knowledge of his appearance in court as a trial juror.

Q. He is Chinese? A. Yes, I would——

Q. And a farmer?

A. That is what I understand—or private rancher or small farmer or truck farmer of some sort.

Q. No. 39 is Walter W. Holt—19, Haiku?

A. Yes.

Q. Do you know him? A. Yes.

Q. His race and occupation?

A. He is part-Hawaiian—I don't know what the other racial extraction would be.

Q. Is he an American-Hawaiian? Would that be a description?

A. Yes. And he is connected with the Board of Forestry and Agriculture in some capacity, I am not sure just which. [201]

Q. No. 40 is Edwin K. Muroki—19, Haiku. Do you know him? A. No, I do not.

Q. He is Japanese.

A. I would assume so from the name.

Q. Our information is that he is a storekeeper at Libby, McNeill & Libby. You wouldn't know?

A. I wouldn't know.

Q. I think that is what he says on his question-

(Testimony of Cable H. Wirtz.)

aire. He is one of those who has returned one. Storekeeper, Libby, McNeill & Libby. No. 41 is Mr. John Plunkett—21, Keanae. Do you know him?

A. Well, he ran for office at the last election and I saw him on the platform. I don't know him personally.

Q. He is Irish-Hawaiian?

A. That I don't know.

Q. According to his questionnaire.

A. I would say that he is a mixture.

Q. Foreman with East Maui Irrigation Company.

A. I wouldn't be positive of that.

Q. So he states.

A. Well, I am testifying from personal recollection.

Q. I understand you are, Judge. No. 42 is Mr. Albert G. Simpson—23, Hana. Do you know Mr. Simpson?

A. I think that is the Simpson that is known as Colonel [202] Simpson who runs the Hana Ranch.

Q. That's right. He is white? A. Yes.

Q. And he is the vice-president of Hana Ranch and the representative of the Irwin estate in the Territory?

A. I don't know those affiliations. All I know is that he appears to be running the Hana Ranch and is Mr. Fagan's representative in the Island.

Q. So Colonel Simpson states in the questionnaire—the information I have just asked you about.

(Testimony of Cable H. Wirtz.)

No. 43 is Edward H. Baldwin—26, Honuaula. Do you know Mr. Edward Baldwin?

A. Yes.

Q. And race and occupation?

A. White ,and I believe manager of Ulupalakua Ranch.

Q. Is that a different ranch from the other Baldwin or the same one?

A. No, two separate ranches, and incidentally your expert yesterday missed the third ranch—Mr. Harold Rice's ranch between the two of them.

Q. What is the name of that ranch?

A. It has a Hawaiian name, I can't recall right now, but quite a sizeable ranch.

Q. No. 44 is Henry S. S. Fong—27, Keokea. Do you know him? [203]

A. Yes.

Q. And his race and occupation?

A. He appears to be full blooded-Chinese. He runs a movie house and store at Keokea, Kula—in the vicinity of Kula Sanatorium, and I understand he is now engaged in some contracting work. And I think he has several enterprises down here in Wailuku stores of various types.

Q. No. 45 is Charles Goodness—27, Keokea. Do you know him?

A. Yes.

Q. His race and occupation?

A. He appears to be full blooded Hawaiian. I don't know what his occupation is. He recently had an unfortunate accident and had his arm blown off—dynamite fixing—and I don't know whether he is employed at the present time.

(Testimony of Cable H. Wirtz.)

Q. No. 47 is Charles E. Thompson—28, Kihei. Do you know his race and occupation?

A. I am not positive about his race. I think he is a mixture there.

Q. German-English-Hawaiian, according to his questionnaire, Judge.

A. That would probably be right. He runs some sort of a farm or small ranch down at Kihei.

Q. No. 47 is Stanley C. Friel—30, Pukoo. Do you know Mr. Friel? [204]

A. I am not positive. There are a lot of Friels in the Islands. I have met a lot of them, but I can't say I know this one positively.

Q. He states he is caucasian-Hawaiian and a foreman at the United States Engineers Office. You don't know that? A. No.

Q. No. 48 is Charles E. Morris—31, Kaunakakai. Do you know Mr. Morris? A. Yes.

Q. Well, tell me about his race.

A. He is white and to the best of my knowledge he runs an open house movie theatre in Kaunakakai.

Q. No. 49 is Kenneth Auld—32, Hoolehua. Do you know Mr. Auld? A. Yes.

Q. And his race and occupation?

A. I suspect Scotch-Hawaiian. And he is employed—I don't know whether it is at Libby or the other pineapple company over on Molokai—but in what capacity, I am not sure.

Q. California Packing section superintendent, according to his questionnaire.

(Testimony of Cable H. Wirtz.)

A. Yes, probably it.

Q. Born in Honolulu and he states the nationality of his father and mother as part Hawaiian. No. 50 is Paul R. Reinhart—30, Maunaloa. Do you know him? [205]

A. No, but I do know—have found out since he has never qualified for this Grand Jury, having desired to be excused for business reasons—that he is in some sort of a supervisory capacity with—Well, it may be Libby or the other one—one of those two pineapple companies over on Molokai.

Q. He says he is assistant superintendent of Libby, McNeill & Libby.

A. Despite two sessions of the Grand Jury, he requested an excuse and has been excused. He has never qualified.

Q. He gives his nationality as German.

A. The name would appear so.

Q. You mentioned two sessions of the Grand Jury, Judge. Have there been two terms this year?

A. No, it is all in the same term, but we had a session, I believe, in March some time. That was the original session of the Grand Jury. And then there was a second one just recently on the occasion of this challenge that was presented—at which time, on the basis of the challenge the cases involved were withdrawn from consideration of the Grand Jury.

Mr. Resner: At this time, if your Honor please, I would like to put in evidence the form of the questionnaire used.

(Testimony of Cable H. Wirtz.)

The Court: It may be received and marked the next number.

Mr. Resner: Judge, with regard to the qualifications [206] of jurors, the requirement that a person can understandably read, speak and write the English language, what standard did the Jury Commissioners use in finding out whether a person could or could not meet that requirement?

Witness: It is hard to establish any arbitrary standard. I have had personal experience with people, especially here in the Islands where there are different racial groups, who have a very good education—even going as high as partially through college—return to their home environment and in four or five years, they might not even qualify. But, on the other hand, there are a lot of persons who may not have had any education at all or very little who have helped themselves along as life goes on and can certainly qualify.

Q. What does that mean to you as a Jury Commissioner—understandably speak, read and write the English language?

A. Well, of course some of the attorneys may not agree. From the questions they ask them on voir dire, it would seem that the attorneys require a L. L. B. degree—especially when they ask them to define reasonable doubt and certain of the other pertinent facts. I would think the equivalent of an 8th grade education. By equivalent, that doesn't mean actually eight grades, but the equivalent. It

(Testimony of Cable H. Wirtz.)

may mean anywhere from one, providing he has done something. [207]

Q. In other words, a person could go as far as the fourth grade and still have an understandable knowledge, according to your understanding?

A. That is correct.

Q. When you went over all these names and came out with these 50 names on the list, how did you determine whether these 50 could understandably meet the requirement we are just talking about?

A. I might explain that—taking precinct 1 as an illustration, we got the questionnaires together and after they were read and discussed by the Commissioners, we set forth tentative lists of qualified persons and questionable. In other words, there were some that might or might not qualify, depending upon future investigation—and others that were exempt or some others that clearly appeared not to have the educational standards and who themselves stated in their questionnaires that they didn't think they were intelligent enough and they had maybe a first or second grade education, and we put them on that list. However, these are all lists that are designed—and also we had those who were out of the jurisdiction and some of those who were temporarily out and those who were deceased and the questionnaires not received. The purpose of this list is to get an available jury. Nobody has definitely or was definitely rejected. As you well know,

(Testimony of Cable H. Wirtz.)

anybody who may not be qualified today may be qualified tomorrow—a felon may be pardoned by the [208] Governor. If he has the qualifications, he is automatically qualified for jury service. A person who doesn't have, may not have the equivalent of the knowledge for reading, writing and speaking the English language, may better himself so that from time to time these categories change. The first thing the Commissioners will do is to review the present tentative list.

Q. Let me ask you this—on this understandably reading, speaking and writing English, if a person returned a questionnaire and said, “I don't think I have got enough education”—as I have looked through a number of these questionnaires, I saw that to be the statement of persons made—would you take their word for it, or would you find out for yourself?

A. We have temporarily put them on the last list. Sometimes we question them and put them on the questionable list. It is subject to review. We can't do everything at once.

The Court: We will take a recess.

(Second Circuit Court recessed at 11:05 and reconvened at 11:15 a.m.)

Witness: I should like permission to amplify my last answer—the question having to do with the understandably reading, writing the English language. That is this—as far as the Grand Jury is concerned, [209] the Commissioners endeavor in so

(Testimony of Cable H. Wirtz.)

far as humanly possible to make sure that they do qualify fully. Of course, we don't always succeed. As I pointed out in the case of this Japanese boy, Ajifu, he has the high school education, but due to the fact that he was struck by a shell on the head at Anzio, he no longer can speak or read or write the English language coherently. That appeared when he actually came to court. This is done for the reason that as far as the Grand Jury is concerned we don't normally have the extra-sweeping process of examination on voir dire that occurs with every trial jury.

Mr. Resner: So at least, to sum it up, so far as the person setting forth his own qualifications, if he deems himself disqualified at this stage of your selection of grand jurors, you put him to one side rather than call him in and investigate him on educational requirements.

A. We intend to investigate him at some future time. In some of the smaller precincts where we have a dearth of voters and some—nearly all of them claiming disqualification for that reason, we may have to call them in immediately in order to get a grand juror or trial juror. We haven't as yet had to do that.

I might state for the benefit of Counsel that as I stated before no one has definitely been excluded from jury service on account of the reading, writing and speaking requirement, and to my knowledge no one [210] that was under consideration by the Jury

(Testimony of Cable H. Wirtz.)

Commissioners for either the Grand or trial jury was excluded for that reason.

Q. Judge Wirtz, the requirement of a person being intelligent and of good character, what standards, if any, did you set up on that qualification?

A. Well, that is—well, in addition to the reading and writing—I suppose we have to be able to comprehend what is going on. Intelligence allows you to coordinate what you read and write so you can speak intelligently. And good character—well, good moral character.

Q. Without calling these people in and questioning them, what you were going on was—with regard to good intelligence, good character—was good reputation in the community and so on?

A. That is correct.

Q. On the requirement that a juror be selected, summoned, returned and sworn without reference to race or place of nativity, what does that mean to you?

A. It means that we do not consider any racial distinctions or their prior residence in connection with selecting the list, in the first place; and that they be summoned in accordance with the list, and the judge will not refuse to let them sit for any racial reasons.

Q. In other words, whether a person is of one race or another is not supposed to be a factor in the making up [211] of a grand jury, is that it?

A. We wouldn't be observing our oath as Jury Commissioners if we did.

(Testimony of Cable H. Wirtz.)

Q. And also the Constitution and laws of the United States and Territory.

A. That's right. I think there is a similar provision in every state of the Union.

Q. Now, just to see that this is definitely in the record, why then is question 7 in the questionnaire—nationality of father and of mother?

A. Well, I can't definitely say offhand. It is not directed towards the racial descent, necessarily. It is directed towards the prior citizenship. In other words, these questionnaires—while they are used by the Jury Commissioners, are likewise used by attorneys at the time they examine the jurors on voir dire. A person who is a citizen of one generation may have an effect upon the attorney as to whether he wishes to challenge him peremptorily if he can't challenge him for cause.

Q. Is it or is it not a fact that questions 3 and 4 would give the Jury Commissioners all the information they need on the citizen qualification, particularly when taken into account that you have their registration affidavits on file which give you all information concerning citizenship?

A. Which registration affidavits? [212]

Q. Registration to vote.

A. Well, he may, be born—he may be registered to vote, but we have some instances where he would not be qualified as a citizen. This has nothing to do with question 7, of course—but one of the questionnaires we received came from Oahu Prison and the

(Testimony of Cable H. Wirtz.)

prospective juror told us he would not be available until 1956—and we agreed.

Q. But on that point, Judge, that has nothing really to do with questions 6 and 7. What I am talking about now is citizenship. Isn't it true that questions 3 and 4 give you all the information you need as to citizenship? A. I think so.

Q. Particularly when you take into account that you have the registration affidavits in the County Clerk's office and these questionnaires are sent to registered voters of the male sex—and don't the registration affidavits contain information that would establish, *prima facie*, at least those persons' qualifications as electors?

A. I have never seen the registration affidavits you refer to. I don't know whether that is the practice in this jurisdiction or not.

Q. I mean a person has to register to vote, doesn't he? A. That's right.

Q. And when you register to vote, don't you give certain information to the deputies who take the registration? [213]

A. I don't run that office.

Q. But you have registered to vote?

A. Yes.

Q. Do you recall what information you gave in the register?

A. Well, I told them my name and my citizenship.

Q. Your place and date of birth?

(Testimony of Cable H. Wirtz.)

A. That's right.

Q. Or if you had derivative citizenship, you would have given that information?

A. That is correct.

Q. Place of residence, last residence and things of that character—occupation and so forth.

A. That's right.

Q. That is the information you gave?

A. Yes.

Q. And it is on the basis of those registration affidavits or registered voters that the questionnaires were sent out?

A. That is correct.

Q. Now, then, with regard to those from whom you had no questionnaires, you said you got those from the register of voters?

A. Yes.

Q. And then you looked through them and picked out persons you thought were proper to serve as grand jurors. Now, when you made your selection of 50, were those a deliberate selection or did you just throw all the names [214] into the hopper and pull them out at random as the fifty you would choose?

A. No, it was not deliberate. It is required under the statute after careful deliberation to pick a list.

Q. Out of the——?

A. Those I didn't know personally, either or both of the other Jury Commissioners knew.

Q. Let me ask you this—there are, according to the general election on Maui of November 5th,

(Testimony of Cable H. Wirtz.)

1946—there were 6,572 males registered which would form your basic list from whom qualified persons might come.

A. I would like to correct you on that, Mr. Resner. I think at the end we did have the last registration, but don't forget the Jury Commissioners started working in June and at that time we had to use the registration from the prior election. And then we got the registration for the new primary—so there was a supplemental all along—a final list that we considered was the final registration that you refer to.

Q. But what I am getting at—you said approximately there are six and seven thousand persons from whom eligible grand jurors could be selected.

A. That is correct.

Q. And assuming that some of these persons have not the intelligence, the good moral character or the English knowledge of which you speak, and assuming [215] still that the vast proportion of these people have those qualifications, they would therefore be eligible? A. Yes.

Q. Which would be revealed by your questionnaires and also your own investigation and knowledge. You didn't take the group of those who would be qualified under that registered list, say it would be 4,000 or so, and pick at random from the 4,000?

A. No.

Q. You selected consciously the 50 that you did come up with?

(Testimony of Cable H. Wirtz.)

A. That is correct. And as a matter of fact, as I have pointed out before, it was not a question of polling all of the registered voters. We did it by precinct. And even in case of a precinct where we had maybe a hundred or so qualified, we didn't throw those in the hat and pick out two, if the precinct called for two.

Q. You consciously picked out the two you wanted on the jury?

A. No, we gave consideration to their prior experience, to the fact that they reflect to a certain extent the spirit of the community from which they are selected.

Q. What do you mean by that Judge?

A. The idea of getting your cross section and a representative jury was to get the feeling throughout the [216] county. A person—say, store keeper, is in an excellent position to be able to reflect the sentiments and feelings perhaps of a particular community.

Q. Would you say that the store keeper would have more ability to be representative of the cross section of the community than a working man?

Mr. Crockett: To which we object, if the Court please—purely argumentative.

Mr. Resner: I think the Judge is a very competent witness who understands all the questions.

Mr. Crockett: That is perfectly true, but it doesn't seem to me the place for Counsel to be arguing with the witness——

(Testimony of Cable H. Wirtz.)

Mr. Resner: I am not trying to argue, Judge.

The Court: I think the question is in the form objectionable. It isn't a question of whether one is better than the other. It is a question of whether the one selected was properly selected.

Mr. Resner: Let me rephrase the question then. Is a store keeper more representative of a cross section of the community than a working man?

Witness: Not necessarily. We picked Mr. Saka because—put him on the list because he could reflect the sentiments of his particular settlement or community.

Q. Judge, in selecting this list of 50, was it the purpose of the Jury Commissioners to select a true [217] cross section of the community.

A. So far as we were able. We did not have the benefit of the expert on the census, but on the other hand, the Jury Commissioners were not interested in figures. We were interested in names. A problem always arises—although there are some qualified persons who do not register to vote—on how to find out who they are—because the requirement of the statute is not that you have to be a registered voter. You just have to be qualified to be able to register.

Q. In other words, all the citizenry is eligible even though he might not be registered?

A. That's right. But the question is how to get that information.

Q. Let me show you Defendants' Table 5, Judge,

(Testimony of Cable H. Wirtz.)

and point out to you the breakdown. It appears that of qualified persons 21% of the community are managerial, entrepreneurial or clerical and 79% of qualified persons are laborers. It appears that on the 1947 panel, its composition is 89.1 from the managerial, entrepreneurial and clerical group and 10.9 from the laborer group. Would you say that the composition of the 1947 Grand Jury is a true cross section of the community in so far as the occupational groups of the people are concerned.

A. I don't think I am in a position to answer the question for the reason that you are begging the first question. Not all of those set forth are qualified persons. I have no way of knowing.

Q. Assuming that all of them are qualified, what I am asking is this—is the instant Grand Jury a true cross section of the occupational characteristics of the population of Maui County?

Mr. Crockett: If the Court please, we object to the question. Counsel is asking the witness whether or not that is a true cross section. That is not required by the statute, not required by the decisions of the Supreme Court. All the Supreme Court requests is a representative cross section and not a true and accurate cross section based upon statistics or anything of that nature. The Supreme Court specifically stated that there are certain elements in the community which are not represented at all—for example, lawyers, doctors, teachers and so forth—they are not represented and not entitled to

(Testimony of Cable H. Wirtz.)

be represented. Aliens are a part of our community. They are not represented. So how could the Jury Commissioners by any stretch of the imagination draw up a list that is a true cross section of the community. We object to the question on those grounds, if the Court please.

Mr. Resner: I think the question is proper under the decisions, your Honor. [219]

The Court: The objection is sustained.

Mr. Resner: From what you know of the population, from your own knowledge, Judge, of Maui County and reviewing what has gone before here today—that is, with regard to the occupational affiliations or work of the different grand jurors whose names we have gone over, would you say that those grand jurors proportionately represent on the Grand Jury equal proportions of race employment in the County?

A. I don't think they proportionately represent—it is impossible to get a true proportionate representation. But it is representative of every walk of life in the community.

Q. On the Grand Jury?

A. That's right. Of course there is a vast disagreement between the Jury Commissioners' views as to who are in the so-called management class and your views on the subject or your theories. We regard entrepreneurs and independents as not at all affected or affiliated with management—as well as certain clerical help. I can't see the connection—

(Testimony of Cable H. Wirtz.)

why they should be tied up in all your tables as pro-manager.

Q. The figures on the Grand Jury, broken down, show that out of the 50, some 33—that is, the statistics that we have in evidence here show that some 33 out of the 50 are in the so-called managerial group or [220] ownership group.

A. Your description of the managerial group.

Q. Yes. Now, you wouldn't say that that representation, 66% of the Grand Jury, you wouldn't say that that is representative of the make-up of Maui County outside the Grand Jury?

A. I want to remind you, Mr. Resner, of the proportion that you offered to prove in view of your statistical expert, the Grand Jury was not selected by the Jury Commissioners. We selected the list. The 50 names were put in a box, at which time Mr. Duponte, who has been associated with Mrs. Bouslog on several occasions, was present at the drawing. The drawing was made after due advertisement. Now, take your mathematical chances of your expert. Any combination of those 50 could have been in the final 23 selected. It might have been that all your class in your laboring class would have been on the Grand Jury and none in what we regard as the management.

Q. When I used the 33 I am referring to the Grand Jury as a whole—not this particular 23 on this case. I am referring to the whole 50.

A. I wonder if you understand the procedure by

(Testimony of Cable H. Wirtz.)

which we select the list. From that list, 23 names are picked by the Clerk in open court after due advertising, and it becomes a game of chance as far [221] as the 23 out of the 50 are concerned. And that Grand Jury, except for good cause, serves for the entire term, and the other 27 are through unless there is reason to call on them to fill a vacancy by death or otherwise.

Q. If the proportions went down to the 23, instead of having 66% from the managerial class you might get closer to 75%.

A. And on the other hand, you might get closer to the other proportion.

Q. But the question I am asking you is this—take the panel as a whole, because the panel is what we are concerned with, the list of 50—would you say that the 33 representatives of management on that Grand Jury list are representative of a like proportion of the population outside of the Grand Jury in Maui County.

A. In the first place, I don't characterize them as management as you do and I do think they are representative of the community.

Q. Let me ask you this—would you say that 66% of the population of Maui County is in the management occupation? A. No.

Q. How much of the percentage of Maui County would you say are among management?

A. I have no definite way of knowing. [222]

Q. Can you approximate it?

(Testimony of Cable H. Wirtz.)

A. No, I couldn't.

Q. Would you say it is around three or four or five per cent?

A. No, I definitely couldn't.

Q. You think it could be more than that?

A. Might be—might not. But you overlook the fact that as far as the Jury Commissioners are concerned, we are not concerned with occupation. There is no reason for us to get statistics together to find out how many are in the laboring class and how many in other occupations—just like we are not concerned with the racial characteristic.

Q. Why did you ask the question on your questionnaires—No. 9, "What is your present occupation?"—and 10—"If employed, by whom and name your superior." 11—"What has been your occupation during the past five years?"

A. That is not primarily the concern of the Jury Commissioners. As I pointed out to you, the questionnaires are used by attorneys. And also, it has this concern for the Commissioners—not their place of employment on there, but the fact that they are employed indicates a more stable citizen.

Q. Can't questions of employment, so far as attorneys are concerned in litigation, be easily ascertained on [223] voir dire at the time of trial?

A. That has been our practice ever since I have practiced law in the Territory of Hawaii. Questionnaires are available for attorneys to assist them on voir dire, and those matters can be brought out much more simply and easier that way.

(Testimony of Cable H. Wirtz.)

Q. So you say the questions are in there, but they have no purpose so far as the Jury Commissioners are concerned?

A. Not the prime purpose to determine the occupational statistics that you are talking about, but as I have pointed out, an employed man is a more stable citizen.

Q. There are approximately 10% of laborers on the Grand Jury list of 50 at the present time. Would you say that the percentage of laborers—and this is among the electors—that is, those qualified to be electors of Maui County is 10% or more than that?

A. Well, there are other qualifications besides just being an elector. I have no way of knowing what proportion are qualified, even among our Filipino population who are citizens. In nine-tenths of the cases that come up—of course most of them are aliens—interpreters have to be used. They speak three or four different dialogues—Visayan, Ilocano and several others.

Q. Well, Judge, out of the 6,500, approximately, electors, [224] male electors, are that many voters, and there were 12,400 registered voters last year, and as you have pointed out there could be more than that who have the qualifications to be voters but may not have registered—our Table 5 shows that of laborers, there are 9,686 or 79% of the population qualified; that is, qualified for jury duty—and that takes into account the educational requirements of which you speak.

(Testimony of Cable H. Wirtz.)

A. That is a figure that has been determined by your witness. I can't say whether it is true or not.

Q. I understand that. I am not asking you to agree with me. All I am asking is this—whether in your knowledge or judgment the population of Maui County, of laborers, is in excess of 10%.

A. Oh, possibly. Quite likely.

Q. Quite likely. It would very likely be close to 79%, or, I should say, close to 80% of the population—wouldn't that be right?

A. You mean ordinary laborer? Are you excluding now from your laboring category clerical—?

Q. Yes, excluding those in the clerical, managerial and entrepreneurial positions, which would include professional people and semi-professional people. I am talking about persons who work on a day to day basis as laborers—whether or not the population of the County of those kind of people isn't closer to 80%? [225]

A. I couldn't exactly say. I can say this, though—Maui is predominantly rural. It is almost purely an agricultural county which would imply there would be a large proportion of labor in the field.

Q. Most of the population of the County, then, is what you would class as working people?

A. I can't say just what. All I can say there is a large proportion in the labor class.

Q. Certainly and substantially more than in the so-called management?

A. Oh, yes.

(Testimony of Cable H. Wirtz.)

Q. On this question of racial make-up of the jury, let me show you Defendants' Exhibit 5.

(Counsel for Movants handing paper to Witness.)

Q. (continuing) And it appears from that that of the present panel of 50, the list of 50, 56% of the panel is of purely caucasian, and that excludes the caucasian-Hawaiian. Would you say that the population of Maui County is 56% caucasian?

A. No.

Q. Would you say that the population of Maui County of non-caucasian character is something between 80 and 90%?

A. That I couldn't be sure, but it is substantially greater than the caucasian.

Q. Now, this Grand Jury list of 50 has 28 caucasian persons among it. Would you say that that is a true cross section of the community so far as race is concerned? [226]

A. As I pointed out before, race is one of the things we are forbidden by law to even consider.

Q. Yes, I understand that.

A. So that we are not concerned, as I see it, with the matter of race.

Q. Judge, how does it happen then that 56% of the jury or 28 of them can be caucasian when, as you yourself have indicated, the overwhelming population of the County is non-Caucasian?

A. Because they are qualified—just as the other 22 are qualified.

(Testimony of Cable H. Wirtz.)

Q. Do I understand, then, from your statement that the overwhelming number of non-caucasians is not qualified?

A. That I won't know until we finish all of our questionnaires and get everything in. Looking at precinct 1, Lanai, there were quite a few on the qualified list—I don't remember—that have been tentatively set as definitely qualified who have oriental names.

Q. Have you got your file, Judge Wirtz, for the second precinct—Honolua? A. Yes.

Q. How many registered voters are there in that precinct?

A. At the time that we considered it and made our fractional proportion—ratio—we had 96 voters.

Q. Yes. Now, then, you get questionnaires back from all of them, Judge?

A. Not all, I don't think.

Q. Well, let me——

A. There were two, four—six that were not received, according to the tabulation made by the Clerk, but the vast majority—and three, according to this list, were out of the jurisdiction.

Mr. Resner: I want to have marked for identification, as next in order, two lists. One is a 1946 Register of Male Voters of the County of Maui, 3rd Representative District, 2nd Precinct, Honolua—the first being Non-ILWU members and the second being the same thing of ILWU members.

The Court: It will be marked for identification

(Testimony of Cable H. Wirtz.)

with the next succeeding number. You want them marked separately for any purpose?

Mr. Resner: Yes, because they would have to be identified separately. You have 96 questionnaires returned, Judge Wirtz?

Witness: No, I said that there were—I haven't checked this list, but the compilation made by my Clerk indicates that six questionnaires were not received—returned, in other words. The reasons are not given. There are three listed out of the jurisdiction—whether they returned questionnaires, I don't know, but apparently all the rest have complied. [228]

Q. I just want to hand you here Defendants' No. 13 for identification, and that is a list taken off the registered voters' list of non-ILWU members in the second precinct, among whom you will see Mr. Burns' name. He is the juror from that precinct, as a matter of fact.

A. That is correct.

Q. And then I hand you next a list of 65 names of ILWU members in that precinct. That is No. 14 on defendants part, those also being registered voters. I think the comparison with your questionnaires will show that to be the fact, Judge. You see, I assume that your questionnaires went to the registered voters.

A. That is correct. But the questionnaires nowhere show, unless the person voluntarily puts it on, there is no way of knowing which one is ILWU or what union or any union.

(Testimony of Cable H. Wirtz.)

Q. I understand that. But what I want to show is this, Judge—Id. 13 shows you received 31 names and their occupations—their occupations, generally, being the descriptive term we have given of managerial, entrepreneurial and clerical with, as you will see, the various employment, both private and government, as the case may be; and then by looking at the names, you can tell only the race of a great many of them. I think your own figures will show that in that precinct, there are 57 Japanese—54 [229] Japanese out of 97, and 23 Hawaiian—the rest being scattered. And then this Id. 14 showing you ILWU people, being mainly employees, shows 65 people, mainly people employed by Baldwin Packers. And the question is—taking into account the employment make-up in that particular precinct and the racial make-up, in your judgment would Mr. Burns be representative of that group?

Mr. Crockett: To which we object, if the Court please. I think that question is incompetent, irrelevant and immaterial—not a question of whether Mr. Burns is representative. Mr. Burns—naturally one man can't represent a whole precinct. He can't combine in himself all the different races or combine in himself all the different social groups which might be present. To ask the witness whether or not Mr. Burns is representative—on the face of it, it is absurd.

Mr. Resner: I submit the objection. I think the Judge——

(Testimony of Cable H. Wirtz.)

The Court: I don't know, Mr. Resner, upon what basis it is you give that the Jury Commissioners, with no investigation of the racial character, no investigation of the union affiliation—being prohibited by law to make distinctions as to race—are to apply the term "representative of the community." That is, there is no qualification in the statute that requires occupational distinctions to be made. [230]

Mr. Resner: Well, may I point out this to your Honor—the questionnaires which they sent out seek information on the question of race and information on the question of employment.

The Court: I don't take it in that capacity, Mr. Resner, and that is because you come into this jurisdiction as an associate Counsel from a different environment. The long practice in the courts of this Territory has been that the questionnaires are sent out for two purposes, the witness having testified to you, and I take judicial notice of the fact that the Court knows that the questionnaires are sent out for two purposes—one being to identify the personnel to the Jury Commissioners; the other, to have a convenient dossier for lawyers when they examine jurors. And on the question of citizenship, it seems they are informative to the recipient of the questionnaires when they come back whether the conclusions of citizenship may be questionable from the knowledge given as to the nationality of father and mother. Secondly, as to the employment side,

(Testimony of Cable H. Wirtz.)

from what the witness has said it is there for the purpose of aiding the lawyers to identify the associations of the respective jurors when they examine them on the trial panel.

But as to the other feature of it, I of course have to leave it to the examination of the witness on the witness stand whether or not they made any distinction [231] or choice because of occupation. There isn't any evidence in the case as yet that that was made a criterion, and there isn't any evidence or rule of law that makes any distinction that because a man is a working man or because a man, in your designation of employer class, is not a working man—that there is a distinction. If it were so, then this Judge is disqualified to sit in this case because I have never worked with my hands and therefore I am prejudiced and biased against a man who does—which is an absurdity. There isn't any gentleman in this Territory who can accuse either the Judge who usually presides here or accuse the Judge who is now sitting of any bias and prejudice against any citizen of this Territory by reason of his occupation.

Mr. Resner: Well, Judge, of course, I am not here making accusations—I want that understood.

The Court: Oh, yes you are. You are here making accusations in your charges upon this Grand Jury.

Mr. Resner: Certainly—we are certainly making accusations as far as the Grand Jury is concerned.

(Testimony of Cable H. Wirtz.)

The Court: I am pointing out that you apply to the Court the terminology you use to the Grand Jury, and it is an absurdity.

Mr. Resner: If your Honor feels that way about your own qualification, I can't debate——[232]

The Court: It is not a question of feeling; it is a question of knowing——

Mr. Resner: All I know is what I read in the decisions of the Court. I am trying to construe what I think is the Court's ruling of law, and the Court said in the case of Thiel vs. Southern Pacific Company that "The American tradition of trial by jury, considered in connection with either criminal or civil proceedings, necessarily contemplates an impartial jury, drawn from a cross section of the community"—and we are proceeding, of course, Judge, on that proposition.

Now, my question of Judge Wirtz is this—in the second precinct at Honolua—and it is typical of the whole County—as the figures there show, there are 65 people, members of the ILWU, who work for a living with their hands. There are some 31 others who are in the so-called managerial group. Now, there are 54 Japanese and 23 Hawaiian, a total of 77, out of 96 non-caucasian groups in that community, and, as a matter of fact there are less than ten of the so-called caucasian group in that community. The grand juror selected—and selected not by random, not by picking him out from among 96 persons out of a hat—but consciously picked by the

(Testimony of Cable H. Wirtz.)

Jury Commissioners, is Mr. Burns who is, one, a caucasian, and, who, two, is employed in an executive capacity by Baldwin Packers. It is our contention, [233] according to the Thiel case which I have just read to the Court, that that is not representative, not a true cross section, not an impartial jury drawn from a cross section of the community. And it is to that proposition that I address my question.

The Court: The proposition you forgot to read in the same decision of Judge Murphy, found on page 220, is: "Jury competence is an individual rather than a group or class matter."

Mr. Resner: I don't dispute that.

The Court: The question is addressed here to a factor prohibited from the Jury Commissioners to think about or to make a distinction on, and the witness has so testified. Secondly, the requirement doesn't go into any arbitrary situation that in each precinct the majority racial group, in each precinct the majority occupational group must be the source of which the representative is chosen, but that over the whole Island and County that out of the complex they shall get those representing the thought, the feelings, the occurrences, the familiarity with the people in the locality from which they are drawn and be representative of the sentiments that those people harbor.

Mr. Resner: We dispute that it is a representative jury in that regard.

(Testimony of Cable H. Wirtz.)

The Court: On the question that has now been [234] propounded, the Court will have to sustain the objection. We will take a recess until two o'clock this afternoon.

(Second Circuit Court recessed at 12:02 p.m. and reconvened at 2:00 p.m.)

Mr. Resner: Judge Wirtz, in your opinion is the instant Grand Jury list of 50 a true cross section of the community of Maui?

Witness: I think it is.

Q. Why is there such a large proportion of management representatives in the jury in comparison with the population of Maui?

A. Well, they are certainly qualified. It may be that when all the questionnaires are finally in, we will have a better picture on that score, but once again I am not so sure that there is such a predominance of management as you contend because you have a different category of management than we have in mind or is commonly understood.

Q. Just so that may be clear, what is your definition of a management representative?

A. One who is directly in control of or ownership of—that hires labor. But in the distinction that you are trying to point out in this case—discrimination against field laborers—I don't see where an entrepreneur or private person running a private enterprise is on the opposite pole from the category that your clients fall in. [235]

(Testimony of Cable H. Wirtz.)

Q. Don't you think they occupy a different economic status in the community? A. Yes.

Q. For example, would you classify a person who is cashier for Baldwin Packers as a representative of management?

A. I think he is eligible to join a union. I don't know the rules on that—maybe not your union, but he can form his own union. I don't regard him necessarily as a tool of management.

Q. I am not speaking of it in the sense of using a person as a tool of management, but as a representative or allied with management.

A. Everybody in the community, even members of your unions, are servants and representatives of management.

Q. Do you think there is a difference in outlook in economic objectives between management on the one hand and employed workers on the other?

Mr. Crockett: If the Court please, we object to that question. Counsel is simply intervening here at this point argument as to the witness's views as to some abstract questions which are not material to the issue. I understand the witness is on the stand to determine facts, not to argue various abstract things such as Counsel is bringing up now.

The Court: I call Counsel's attention to the [236] fact that seems to have been forgotten up to date—that we are concerned with a proceeding that originates from a charge by Andrew S. Freitas of violence against the laws of the Territory, and there

(Testimony of Cable H. Wirtz.)

is nothing in that situation that raises any question of economic status, but the right of every free individual to be free of violence—and I know of no different psychology whatever that differentiates between violence against one man and violence against the other—which is against the laws of the Territory of Hawaii.

Mr. Resner: Before the record is completed, I think it will be evident that the case that the Grand Jury contemplated here was one which grew out of a labor dispute, and as I read the Ballard case, certain questions may apply to selection of jurors.

The Court: If it is a labor dispute, but I know of no thing—and are you going to prove that Mr. Andrew S. Freitas, who brings this charge, is tied up with management in any respect?

Mr. Resner: Is that competent, your Honor?

The Court: I think that is absolutely basic in view of that being the charge brought by Mr. Andrew S. Freitas against these defendants. On a charge of such a nature as going against the laws of peace in the community, it has nothing to do with management versus labor. It has to do with whether or not individuals violated the statutes of the Territory of Hawaii. [237]

Mr. Resner: We will bring out that the charge made against these men arose out of a labor dispute and that the charge which the Grand Jury purports to investigate was one growing out of a labor dispute, and that these defendants are involved in a

(Testimony of Cable H. Wirtz.)

labor dispute. Under those circumstances, certain standards are set up with regard to the selection of grand and petit jurors.

The Court: I don't think you understand. If this were a case involving an attack upon a labor union by Mr. Andrew S. Freitas, there might be something in what you say. But this is a charge of violating the laws of the Territory as to violence, and upon that every adult human being within the ages of the jury service and who can understandably speak and write the English language and is a citizen has a right to an opinion. And I don't understand the attitude that a person who is employed with management or a person employed as a janitor, on the question of violence could have any different attitude as to whether the facts as brought up by a witness should warrant a charge. The objection is sustained.

Mr. Resner: Just for the record, your Honor, I want to point out in the case of Fay vs. New York—

The Court: The Court has ruled and doesn't want any further argument.

Mr. Resner: I am not arguing. I am merely making a statement before—— [238]

The Court: You can make it in your final argument before the Court. The ruling is made and we will proceed with the case. As I told you, we don't want a continuation of that sort of thing.

Mr. Resner: How do you explain, Judge Wirtz, the large proportion of white persons on that Grand

(Testimony of Cable H. Wirtz.)

Jury as compared with the population as a whole of Maui?

Witness: As I stated before, we are not necessarily concerned with race or the difference between caucasians and non-caucasians. They are all citizens. As a matter of fact, as has been borne out in examination, some of those that carry what might be called white man's names turn out not to be purely caucasian, which is common in this community, as it is throughout the Territory.

Q. Do you feel that upon the basis of race that the composition of this Grand Jury list as a whole, the 50 members, is a true cross section of the community?

Mr. Crockett: If the Court please, that question has been asked and answered and we object to it. This is direct examination, and Counsel doesn't have the right to go over the same question and go over it time and time again. The witness just stated—the first question put to him was did he consider this Grand Jury was a true cross section of Maui, and the witness gave the answer to that particular question. The [239] question he is asking now is the same thing.

Mr. Resner: I asked that question on the grounds of occupation. I ask this question on grounds of race.

The Court: Objection sustained.

Mr. Resner: A person older than 60 years is not supposed to serve on the Grand Jury, is that correct?

(Testimony of Cable H. Wirtz.)

Witness: If he claims his exemption.

Q. If he claims his exemption?

A. That is correct. That is my understanding of the law. And often in questionnaires or from personal knowledge, we have information a person doesn't want to claim his exemption. He is not automatically disqualified because he is over 60 years of age. There was one of the grand jurors who was listed and selected who on a previous term served as a trial juror and did not claim his exemption, but he claimed it this time on the Grand Jury. That was Winford Percy.

Q. Mr. Charles Thompson is 67. He is one of those over the age of 60? A. Yes.

Q. And that exemption was waived?

A. He has always expressed a willingness to serve as a juror.

Q. I see. A person is exempt if he is an attorney-at-law. Does that mean an attorney-at-law could serve in your definition of the statute? [240]

A. I think he could, but it would be foolish for him to do so.

Q. I am merely inquiring, Judge, what the disqualification——

A. I notice there are certain government employees who are on the jury list who have waived their exemptions. One is Walter Holt, connected with the Territorial government; and the other was a Japanese boy, I think, Maeda, connected with the County.

(Testimony of Cable H. Wirtz.)

Q. I see Mr. John Plunkett is over 60. He is 65 years of age. He waived his exemption?

A. As far as I know—I don't know. Was that one covered by questionnaire? He hasn't stated to the Court that he wishes to claim an exemption. What precinct is he in?

Q. Twenty-one.

A. Is his questionnaire by any chance in that other file? Where is that other file that we have of the trial jurors, I mean grand jurors. Here it is. Going back to Mr. Charles Thompson, in answer to question 15, "Do you claim disqualification or exemption from jury service?" Answer, "No." John Plunkett—he did not answer the question at all; that is, he left it empty. We presume he is willing to serve until he so indicates.

Q. How do you explain the large number of persons who served anywhere from two to five consecutive [241] years on the Grand Jury in the last six or seven years?

A. Those are persons who we definitely know are qualified. As I pointed out to you, some of them have got their L.L.B. degrees through questioning of counsel, and we are trying to prohibit it by law from repeating them now on the same jury list. A person on this year's jury list can not be placed on next term's jury list, but he can be placed on the trial list. We are trying to extend that somewhat.

Q. In your opinion, hasn't the membership on

(Testimony of Cable H. Wirtz.)

the Grand Jury been narrowed down in the last five or six years by the use of persons who have served two or three or four consecutive years?

A. That may be true, but they are nevertheless qualified, in our opinion.

Q. Let me show you this summary of consecutive service.

(Counsel for Movants handing paper to Witness.)

Q. (Continuing): Between the years of 1942 and 1947, Judge Wirtz, from your knowledge of this situation would you say that that seems to be the fact?

A. My knowledge of the situation dates when I took office, which was in the spring of 1944. The first jury list that came out when I was Jury Commissioner would be the jury list of 1945. [242]

Q. You see here that the analysis we made of the Grand Jury shows that between 1942 and 1947, there were two jurors who served for five consecutive years; six who served for four consecutive years; fifteen who served for three consecutive years; and thirty-one who served for two consecutive years.

Mr. Crockett: If the Court please, may I object to that question until Counsel makes it more definite what he means by the word "served." In other words, it doesn't appear from the question, from the list which he has handed me for my inspection, whether or not these persons were on the grand jury list or whether or not they were

(Testimony of Cable H. Wirtz.)

actually called and served as grand jurors—that is, on the actually sworn panel.

Mr. Resner: On the list, Counsel.

Mr. Crockett: In other words, this list refers entirely to the list.

Mr. Resner: The panel as a whole from which the jury is selected.

The Court: Suppose you modify your question and be explicit, Mr. Resner. The use of the word, “serve”, will leave confusion.

Mr. Resner: Let me correct it. Selected on the Grand Jury list—on that basis, Judge, does that seem to jibe with your knowledge of the situation?

Witness: I do know that in the three years I have been a Jury Commissioner, there have been some who have had service more than one year. Other than that, we haven’t had an opportunity to check into that—as to whether these files are accurate. I have no personal knowledge of any year before the 1945 term.

Mr. Resner: May the paper be marked for identification?

The Court: It may be marked for identification.

Mr. Resner: You will see there also—or you saw a statement to the effect that out of the years 1942 to 1947, wherein there had been six jury commissioners, the list of 50 for each of those years or, we might say, 300 different jurors on the list—that 203 different names appear rather than 300. Does that correspond with your knowledge of the situation, Judge?

(Testimony of Cable H. Wirtz.)

Witness: No, it doesn't because I haven't had an opportunity to check it. I don't know where those figures were obtained, but from my knowledge there have been some who have served in succession or served two or three terms. But that wouldn't be the full 300 over that period of different names.

The Court: The 1947 list that is now in point—how many of those on the list have been on the list for two consecutive years?

Witness: As I recall, I pointed out to my fellow [244] Jury Commissioners that we are now prohibited by law from repeating; so that on that 1947 list, my best recollection is nobody was—nobody who served on the 1946 Grand Jury list, but there are some who served on the 1946 trial jury list.

Mr. Resner: Are a number of persons on the instant Grand Jury list those who have on other occasions served as trial jurors?

Witness: Served as trial jurors and may have served years ago, served as grand jurors.

Q. And are persons taken from the trial jury put on as service—as grand jurors?

A. That is permissible under the law now, yes. That was done because we had investigated them and were satisfied with their qualifications.

Mr. Resner: That concludes the direct examination.

Cross-Examination

By Mr. Crockett:

Q. Judge Wirtz, in regard to the questionnaires and the fact that the questionnaires called for in-

(Testimony of Cable H. Wirtz.)

formation concerning the occupation of the persons to whom you were sending those questionnaires, I will ask you whether or not the Commission took the fact or the occupation in which the person was employed, and the racial descent, and considered those factors in any wise in connection with determining [245] whether he was an intelligent person, and because of his intelligence qualified to serve as a grand juror?

Witness: Yes, I think those factors might have been taken into consideration, combined with all the other matters. As I pointed out earlier this morning, we considered an employed person as a more stable citizen, a healthy example of a stable citizen.

Q. And were those factors also considered for purposes of identification of the particular person?

A. That is correct.

Q. And so far as you are able to say, were any persons excluded by you or by your Commission by reason of their occupation?

Mr. Resner: If your Honor please, I object to that as calling for the conclusion of the witness. The facts speak for themselves, and I think the witness can only answer as to facts and not as to opinions in that regard.

The Court: I understand the question was directed as to fact.

Mr. Resner: It calls for an opinion.

The Court: Objection overruled.

(Testimony of Cable H. Wirtz.)

Witness: To my knowledge, no one was excluded by virtue of any particular occupation.

Mr. Crockett: Will you state whether or not any person was excluded by reason of his economic status? [246]

Mr. Resner: If your Honor please, the same objection because that also calls for the opinion of the witness and not as a statement to the fact.

The Court: On the contrary, it calls for the fact. You will answer the whole question according to fact, Mr. Witness, and not according to opinion.

Witness: To my knowledge, no one was rejected for that reason. We never considered the so-called breakdown economically, occupationally and racially.

Mr. Resner: I take an exception to the Court's ruling on the last two questions and answers.

The Court: The exceptions will be noted.

Mr. Crockett: In so far as you are able to say, were all persons that were considered by you subjected as far as possible to the same tests for intelligence, citizenship and understanding of English? Witness: Yes.

Q. The question which was directed to you when we reconvened this afternoon was whether or not you considered the list a true cross section of Maui. Do you consider the list a fair cross section of those qualified for jury service in this community?

Mr. Resner: I am going to object to that upon the ground it calls for the opinion of the witness,

(Testimony of Cable H. Wirtz.)

and I don't think your Honor permitted me to go into those questions.

The Court: Objection sustained.

Mr. Crockett: We have no further questions, if [247] the Court please.

Mr. Resner: No redirect.

(Witness excused.)

Mr. Resner: If your Honor please, I should like to offer in evidence, in connection with the testimony of the last witness, the file on the instant Grand Jury.

The Court: I am sorry, I can't allow it in that form. You will have to get certified copies because that is an original file of the court and can't go in in this case. You will be permitted to substitute certified copies. You can see the inconvenience it would be to the court.

Mr. Resner: Certainly. We will see that certified copies are made. I merely wanted to reserve the next number in order.

The Court: You simply want those questionnaires that became a part of the Grand Jury list of members?

Mr. Resner: For this particular Grand Jury.

The Court: For this particular Grand Jury.

Mr. Resner: There are some 20 or 21.

The Court: They may be made into a file and given the succeeding number when offered.

Mr. Resner: Is Mr. Bal, the County Clerk here?

EUGENE BAL

having been first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Resner:

Deputy Clerk: Will you please state your name?

Witness: Eugene Bal.

Q. (By Mr. Resner): You are Mr. Eugene Bal? A. That is correct.

Q. You are County Clerk of Maui?

A. Yes.

Q. How long have you held that office?

A. Since 1936.

Q. I want to show you, Mr. Bal, a paper marked, "List of Registered Voters for the General Election, November 5th, 1946, Third Representative District by Nationalities", and ask you if you are familiar with that document. A. I am.

Q. Who published that document, Mr. Bal?

A. This list is not for publication. We prepared this list and it is submitted to the Secretary of the Territory of Hawaii and is given to the Governor of the Territory of Hawaii to send to Washington.

Q. And this was taken off the list of registered voters? [249] A. That's right.

Q. And it shows the total of registered voters, both male and female, according to precinct, on Maui?

A. According to precinct and nationality.

Q. Yes. And that is, it shows the number of each nationality in each precinct of Maui?

(Testimony of Eugene Bal.)

A. That is correct.

Q. And according to this list, there are 34 precincts, is that correct?

A. That is correct. That includes Kalawao.

Q. The leper settlement?

A. The leper settlement.

Q. And there are eleven breakdowns of nationality groups?

A. That is correct.

Mr. Resner: I would like to offer this document in evidence, your Honor.

Mr. Crockett: You are offering it in evidence now?

Mr. Resner: Yes.

Mr. Crockett: If the Court please, I object to it on the ground there is no showing by whom the breakdown was made or how or what the basis of that breakdown by nationality group is.

Mr. Resner: Well, I can proceed further on that. Mr. Bal, who prepared this document and made this analysis and breakdown according to precincts and [250] nationality groups?

A. My deputy and my staff.

Q. As a part of the official duties of your office?

A. That is correct.

Mr. Resner: I offer the document in evidence, your Honor.

Mr. Crockett: No objection.

The Court: The document may be marked with the next ensuing number in evidence.

Mr. Resner: Let me ask you this, Mr. Bal—

(Testimony of Eugene Bal.)

what was the purpose of the breakdown into nationality groups of the registered voters?

Witness: I stated in the beginning, we have the instructions from the Secretary of the Territory of Hawaii to furnish this information so that the Governor could incorporate it in his report, and send it to Washington—for what purpose, I don't know.

Q. Who figured out the nationality groups into which the registered voters should be divided? I mean who laid it out that it should be, for example, American, Chinese, English, Filipino, Hawaiian, part-Hawaiian, Japanese, Korean, Puerto Rican, Portuguese and all others?

A. The Secretary of the Territory of Hawaii.

Q. I see. Do you know what the term of "American" means as employed in the breakdown?

A. I take it it means all whites, but of course in that respect—that is our instructions. As County Clerk, I consider every person eligible to vote an [251] American, irrespective of what nationality he is. But that is, as I say, our instructions from the Secretary and he gives us that breakdown—American, Portuguese, Hawaiian, part-Hawaiian, Japanese, and so forth.

Q. The Secretary of the Territory?

A. That is correct.

Q. For example, I see here that we have the groups called American, English and Portuguese, which, of course, are all caucasian persons broken down into three separate categories.

(Testimony of Eugene Bal.)

A. That's right.

Q. Now, "all others"—what would that include?

A. French, Irish, German.

Q. People of other origin?

A. Yes, outside of those nationalities specified specifically.

Q. And this particular document, as I say, you would forward to the Secretary of the Interior and then to Washington?

A. Secretary of the Territory of Hawaii.

Q. Secretary of the Territory of Hawaii and then to the Department of the Interior in Washington, and it is kept here as part of the records of your own office?

A. Yes, sir.

Q. I want to show you next, Mr. Bal, a paper called "Official Tabulation, Maui County General Election, [252] November 5th, 1946", and ask you if you are familiar with that document?

A. I am.

Q. Was that prepared in your office?

A. Yes, sir.

Q. By yourself and your deputies?

A. I do all the preliminary work on this. I prepare the original copy and it is checked by my office staff and deputies.

Q. And this shows the breakdown of the number of the numbers of registered voters, male voters, female voters, votes cast as a result of the election?

A. That's right. Votes cast for each candidate for each office.

(Testimony of Eugene Bal.)

Q. And this is a copy of the original document on file in your office? A. That's right.

Q. And this was the last general election held on Maui—November 5th, 1946, and therefore the last time you took a total of the registered voters?

A. Yes. This pertains to Maui County. There is another tabulation that the Secretary of the Territory of Hawaii issues which covers Kalaupapa. You will note on the 34th precinct, no figures show here. Those people at Kalaupapa don't vote for County officials, only Territorial officials.

Q. But aside from that, this represents the last general compilation of registered voters of Maui County? [253] A. That is correct.

Mr. Resner: I will offer this document in evidence, if your Honor please.

Mr. Crockett: No objection.

The Court: The next consecutive number.

Mr. Resner: I want to show you, Mr. Bal, Defendants' Exhibit 13 for identification and ask you to look at it and tell me whether that appears to be a list of persons who are registered as voters in the second precinct at Honolua when taken together with Exhibit 14, indicating the registered voters—the 96 of them in that particular precinct.

Witness: I will not be able to testify to that, I am sorry.

Q. You can check that against your records?

A. My records—yes, I could if I am allowed to check against my records, I could testify.

(Testimony of Eugene Bal.)

Mr. Resner: That completes the direct examination.

Cross-Examination

By Mr. Crockett:

Q. Mr. Bal, according to the official tabulation, the total registered male vote in the County of Maui is 6,572?

Witness: I believe that is correct, yes.

Q. How long did you say you had been County Clerk?

A. Since 1932, and was deputy prior to that. Since 1936 I became County Clerk, but deputy since 1932 to 1936, and been serving as County Clerk since. [254]

Q. As County Clerk, do you have occasion to go around the County conducting the registration?

A. I do.

Q. Are you very well acquainted with the electorate of the County of Maui?

A. I am.

Q. From your observation and experience as the County Clerk and registrar of voters, about what proportion would you say are the persons who are eligible to register who have not registered as voters?

A. From past experience and observation, I would judge about 2,000 or 2,500.

Q. Does that include both men and women?

A. That is correct.

Q. And from your observation and past experience, would you say that there are more—a greater

(Testimony of Eugene Bal.)

proportion of the unregistered vote among the men or among the women? A. Among the women.

Q. In regard to the tabulation which you identified as having been prepared by your office, showing the breakdown into the racial groups, do I understand that you prepared that yourself or your staff? A. My deputy and staff.

Q. From what data or information did they make this breakdown?

A. On the affidavit for registration of voters, we [255] have asked the question there—what nationality they belong to. Prior to that time, the records are not so clear. We either contacted these people or used our own judgment. In some cases, I agree we may have been wrong. For instance if a person was John Doe and the wife came in, Mrs. John Doe. John Doe was a white person and I did not know who Mrs. John Doe was; we put her down as white. She may be part-Hawaiian or any other nationality.

Q. You say prior to that time. What time do you refer to?

A. Prior to when I took over in 1936 when we had the registration forms changed whereby they now give us the nationality.

Q. In other words, prior to 1936, there was nothing in the record to show what the nationality was?

A. Very indefinite—only on the cards that were prepared by the former Clerk and his staff.

Q. Does this tabulation that you presented in-

(Testimony of Eugene Bal.)

clude persons who were on the register prior to 1936?

A. Yes, all those that were on the register at the time—at that election.

Q. So then as to those persons, you say it represents more or less guess work rather than an actual count?

A. Quite a few discrepancies, I admit. I would like to clarify that. The last general registration in the County of Maui took place in 1919. The records for [256] 1919 up to 1932 or 1936 is not very, very clear—I must admit.

Mr. Crockett: That is all.

Redirect Examination

By Mr. Resner:

Q. Do your registration affidavits show party affiliation?

Witness: They do not.

Q. You do have such registration affidavits, do you not Mr. Bal?

A. To show party affiliation?

Q. Have registration affidavits?

A. Yes, we have.

Q. A person coming in to register makes out an affidavit, giving you certain information but is silent on party? A. That's right.

Q. And in the primary election, I understand, the person asks for a ballot and can vote for anybody. A. For anybody on the ballot.

Q. Is there any possible way to determine the political affiliation of voters—whether democratic or republican or any other political affiliation?

(Testimony of Eugene Bal.)

A. Not unless you know them well.

Mr. Resner: While Mr. Bal is on the stand and for the record, if the Court please, I would like to show that the breakdown shows that of the registered voters, so far as the males are concerned, in all the [257] thirty-four precincts Americans amount to 427; Chinese to 237; English, 16; Filipino, 103; Hawaiian, 1,109; part-Hawaiian, 530; Japanese, 2,826; Korean, 10; Puerto Rican, 114; Portuguese, 1,099; all others, 257—a total of 6,728.

Mr. Crockett: We object, if the Court please, for the reason that Counsel has included the precinct of Kalaupapa which is the 34th precinct and which is not within the jurisdiction of the Second Circuit Court, as testified to by Judge Wirtz and also by the witness.

The Court: I think perhaps Counsel better let the paper speak for itself.

Mr. Resner: Yes. The only point I am thinking of is in the record it may be easier to find, but with the correction Mr. Crockett notes, which is the last item, 156 in that precinct. The record otherwise is complete—that is, just with regard to the men.

Mr. Crockett: No objection if that amendment—

Mr. Resner: And with regard to women, correcting it for Kalaupapa, the settlement—of Americans, there are 396; Chinese, 153—

The Court: That is women?

Mr. Resner: Women, Judge. English, 12; Filipino, 83; Hawaiian, 952; part-Hawaiian, 588; Japa-

(Testimony of Eugene Bal.)

nese, 2,511; Korean, 20; Puerto Rican, 79; Portuguese, 821; and all others, 218—the totals of 5,831—there [258] being a total of 100 in the settlement among the women. That is all, Mr. Bal.

Mr. Crockett: No further questions.

(Witness excused.)

Mr. Resner: I wonder, if your Honor please, before the witness leaves the court room, if I might ask permission to have him check those two documents we have for identification against his official records.

The Court: It is up to you and the witness.

Mr. Resner: Yes, but the documents cannot be released from the court room without your Honor's permission.

The Court: It is your document. If it is lost, strayed or stolen, that is your responsibility.

Mr. Resner: Well, then, if I may have permission, I will give it to Mr. Bal.

(Counsel for Movants handing papers to Witness.)

Mr. Resner: There is one point that I want to clear up with Judge Wirtz, and it may not be necessary to recall him. But in connection with the exhibit which we put in for Mr. Bal—this one, (indicating) Defendants' No. 17, I can read them off or I can ask the witness, depending upon your Honor—the questionnaires—the precincts which were not questionnaired until the current year. They appear to be based on Judge Wirtz' state-

ment of those they [259] questionnaired in previous years, but not this year but which are being done this year. Third, Mala-Lahaina; fourth, Kam III-Lahaina; fifth, Olowalu; sixth, Wailuku Elementary School; seventh, Iao Elementary School; eighth, Piihana-Wailuku; ninth, Papohaku-Wailuku; 11th, Kahakuloa; 12th, Kahului; 13th, Puunene; 14th, Spreckelsville; 15th, Lower Paia; 16th, Upper Paia; those are the ones that have not been circularized.

I should like to recall Mr. Oshima for just a moment.

While waiting for that witness, your Honor, we have discovered the originals of the tables, and I would like to substitute them for the copies.

The Court: Check with the Clerk.

Mr. Resner: Yes.

Bailiff: Mr. Oshima is not in the courthouse.

Mr. Resner: Then we will proceed with another witness. I would like to call Mr. Pombo.

AUGUSTINE POMBO

having been first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Resner:

Deputy Clerk: Will you please state your name?

Witness: Augustine Pombo. Judge, may I have the privilege of having the attorney read the com-

(Testimony of Augustine Pombo.)

plaint. I think he said something about the Jury [260] Commissioners being led on by the five big—I didn't quite understand. Is it permissible to read it over again?

The Court: You wait until you are questioned.

Witness: I thought I would like to inform—he has been misinformed. To have a man come down from the Mainland here, don't know who is who, and to make such statements—somebody should go after him.

Mr. Resner: Do you suggest you do that?

Witness: No I would like to straighten the thing out. As you would say, I would like to give my story. I have been a champion of the working man for years and to have somebody call me that I been led by the "big five"—not quite right.

Mr. Resner: I have no objection.

Witness: I would like to have permission to state——

Mr. Resner: Go ahead, as far as I am concerned. The Court is directing things.

The Court: I think we had better proceed in an orderly fashion, please, Mr. Witness, and answer questions. Then when we are through, if there is anything else, we will give you an opportunity.

Mr. Resner: What is your name?

Witness: Augustine Pombo.

Q. Where do you live? [261]

A. Wailuku—right here.

Q. Where were you born? A. Right here.

Q. Wailuku, Maui? A. Wailuku, Maui.

(Testimony of Augustine Pombo.)

Q. What is your age?

A. 52—I will be 53 next April.

Q. What is your occupation?

A. I am at the present time delinquent tax collector in the Tax Office here in Wailuku.

Q. How long have you been a member of the Jury Commissioners? A. Since 1934.

Q. How many terms have you served?

A. Since last year—the democrats thought I was making too much money, I guess, because they had somebody else here a year ago and they substituted somebody else in my place and I don't know how well he did, but the Judge asked me to come back again.

Q. You started first in 1934?

A. I started first in 1934 after the democrat died, Dan T. Carey.

Q. Then you were Jury Commissioner from 1934?

A. I was Jury Commissioner from 1934 to—the appointments come up in July—I think it was 1945 when they appointed somebody else—and I was appointed in 1946 to pick out a jury for this year.

Q. So from 1934 down until the present time, you have been a Jury Commissioner except for one year? A. Yes.

Q. Is that correct? A. Yes.

Q. And you are affiliated with some political party?

A. Yes, I have been a good democrat all my life.

(Testimony of Augustine Pombo.)

Q. Therefore you are the democratic member of the Grand Jury Commission? A. Yes.

Q. Here is the list of the Grand Jury, 50 in number, which is the Court's exhibit in this particular case. A. Yes.

Q. Now, let's go down the list. Do you know Mr. Eldredge personally? A. Yes, I do.

Q. And were you in favor of his selection by reason of personal knowledge of him?

A. I was.

Q. And what do you know of him personally causing you to feel he was qualified?

A. I felt he was a capable man. If I was pinched by the cops and had him on the jury, I would be perfectly satisfied he would be fair.

Q. Now, do you know what he does?

A. I don't know. Don't know. I know who he works for. [263]

Q. Who?

A. He used to work for the Pioneer Mill—now over at Lanai.

Q. Take the next person—Toshio Onuma—do you know him?

A. I am not quite sure. I don't remember the name, but I know lots of fellows, but don't remember the name.

Q. You don't remember the name?

A. No. I may know who he is.

Q. Alfred S. Burns is No. 3. Do you know him?

A. I just know him by sight.

(Testimony of Augustine Pombo.)

Q. Do you know his reputation?

A. Yes, very good.

Q. You know he is a superintendent of Baldwin Packers? A. No, I don't know what he does.

Q. You don't know what he does? A. No.

Q. Did you look at the questionnaire that he submitted?

A. No, I didn't. I looked at his name, what he does, who he works for—don't pay much attention to the rest of it.

Q. Do you know who he works for?

A. I know who he works for.

Q. Who is that? A. Baldwin Packers.

Q. Did that mean to you that he was qualified?

A. No, not because he was working for the Baldwin Packers because they got no use for me—the Baldwin Packers haven't.

Q. A moment ago, Mr. Pombo, you made the statement that you didn't know who he worked for.

A. Yes, I don't know what he does.

Q. I understand that, but I understood——

A. Whether he is a bookkeeper or engineer or pineapple expert, I don't know.

Q. I understand that, but a moment ago you said that you saw who he worked for and that was enough. A. Yes.

Q. What do you mean by "that was enough"?

A. I know—the man been around me a number of times here—some talk—that he is a very intelligent fellow.

(Testimony of Augustine Pombo.)

Q. Do you know Manuel Correia?

A. Yes, I know him well.

Q. Do you think he is qualified?

A. Oh, yes.

Q. Do you know Mr. Ito?

A. No, I don't think I do.

Q. Do you know Mr. Edward Bowmer?

A. Yes, I do.

Q. You know whether he works for Baldwin Packers as a cashier? A. I know.

Q. Did you think he was qualified? [265]

A. I think he is. He used to work in Wailuku before he worked there.

Q. Was there anything particularly about him that caused you to feel he was qualified for the Grand Jury?

A. When he lived in Wailuku, he seemed to be a nice fellow, mind his business.

Q. Do you know Ralph O. Cornwell?

A. Yes, I do.

Q. Do you know whom he is employed by?

A. At the present time, I think I seen him driving this Air Flo truck.

Q. You thought he was qualified?

A. Yes, he is all right.

Q. Tell me, Mr. Pombo, in connection with your discussion of these grand jurors, you had occasion to look at these different questionnaires?

A. Sure.

Q. And you observed in those questionnaires the

(Testimony of Augustine Pombo.)

places where the question was—"Nationality of Father and Mother"? A. Yes, I did.

Q. You noticed that? Did you pay any attention to that question?

A. No, I didn't—don't pay any attention. I don't pay any attention to their nationality.

Q. Are you familiar with the fact, Mr. Pombo, that something like 56% of this grand jury list is made up of white persons? [266]

A. What do you mean, "white persons"? Portuguese is not considered white in Hawaii.

Q. Portuguese are not considered white in Hawaii?

A. Yes, I am not considered white. I am classed with the Hawaiians, the part-Hawaiians, the Chinese, and am perfectly satisfied.

Q. Do you consider yourself white?

A. Yes, but the haoles here don't.

Q. Well, I consider you——

A. Maybe you do.

Q. And I think any anthropologist and anyone who knows anything about race would consider Portuguese as white persons.

A. Only a haole is considered a white man in this Territory.

Q. So I am finding out. Do you know why that question with regard to nationality is included in that question?

A. When I took over this job as Jury Commissioner, Judge Wirtz already had this questionnaires

(Testimony of Augustine Pombo.)

made up, and he asked the Jury Commissioners to use it and we used it. Why he put that in, I don't know.

Q. I see. You continued, however, to use it?

A. I continued to use it because he is a lawyer. He is a much smarter man than I am. He must have had a purpose for making up the question.

Q. When the questionnaires came back, you could see—[267] when the questionnaires came back then by reading that question, what the prospective juror said with regard to the nationality of the father and mother?

A. I couldn't help but see it.

Q. And was that factor taken into account?

A. I don't consider nationality at all when I pick the jury.

Q. How do you explain then the large percentage of so-called caucasian?

A. You mean the haoles?

Q. Haoles as compared——

A. Well, there is only 17 out of the 50.

Q. I beg your pardon?

A. There is only 17 out of the 50.

Q. Only 17? Are you sure of that?

A. Yes, I am almost sure of that. You can come over here and count them with me.

Q. Perhaps so.

A. I just counted roughly.

Q. You maybe know more about it, Mr. Pombo.

A. I may be wrong.

(Testimony of Augustine Pombo.)

Q. Wait a minute until I get my other list.

The Court: I think we had better have a recess for the reporter's sake.

(Second Circuit Court recessed at 2:57 p.m.)

(Second Circuit Court reconvened at 3:08 p.m.)

Mr. Resner: I should like to call Mr. Bal for the purpose of checking the list which he had in the recess. Mr. Bal?

EUGENE BAL

having been previously sworn, was examined and testified as follows:

Further Direct Examination

By Mr. Resner:

Q. Mr. Bal, during the recess you checked Defendants' Exhibits 13 and 14 for identification with regard to their names and addresses as registered voters in the 2nd precinct, Honolulu County. And what was the result of your check?

Witness: The names correspond with those that appear on the official register for the general election of 1946.

Mr. Resner: I offer them in evidence, if the Court please.

Mr. Crockett: To which we object, if the Court please. May I ask the witness one or two questions?

(Testimony of Eugene Bal.)

Mr. Bal, did you check as to the occupations of these several persons that appear on these lists?

Witness: No, sir, the occupation does not appear on the official register of voters—just the name and address. I checked the names. [269]

Mr. Crockett: If the Court please, the lists apparently have the occupation, and at this time we object to the introduction of these lists in evidence until the occupations are either separated from the list or properly identified.

Mr. Resner: Mr. Bal, do the persons' occupations appear on the registration affidavits?

Witness: That is correct—on the registration affidavits for the registration of voters, but our official list that we submit to all the precincts that we keep in our office, all that appears on the list of voters is the name of the person and the place where they live.

Mr. Resner: But a person's occupation could be checked against their original affidavit of registration?

Witness: That's right.

Mr. Resner: I offer that portion of these papers in evidence, your Honor, which shows the names and addresses.

The Court: You will have to split it. At the present time they contain data that is unidentified.

Mr. Resner: That is the occupation.

The Court: Yes.

Mr. Resner: But I will have to prove that in another way, your Honor.

The Court: It can't be in evidence as an exhibit

(Testimony of Eugene Bal.)

until you have identified the data that you purport to show by it. [270]

Mr. Resner: I suppose it could be in evidence for a limited purpose.

The Court: If you want to take the scissors, I will permit the list as a list of identified voters.

Mr. Resner: Very well. I can't do anything further at this point, Judge. I am through with this witness. That is all, Mr. Bal.

(Witness excused.)

Mr. Resner: I want to call Mr. Oshima. It will only take a minute. He is returning to the Mainland tomorrow and he wants to be free to go.

HARRY TATSUMI OSHIMA

having been previously sworn, resumed the stand and testified as follows:

Further Direct Examination

By Mr. Resner:

Q. Mr. Oshima, since the—you have been sworn—and since the adjournment of court on yesterday, did you have occasion to check the Grand Jury names for the present panel and former panels against the questionnaires that have been spoken about here in court?

Witness: Yes. I was able to check on the basis of the material supplied to me from the office there.

Q. How far back did they go through the years?

A. 1943, I think. [271]

Q. Down to 1943?

(Testimony of Harry Tatsumi Oshima.)

A. Down to 1943. Even the 1943 was not complete.

Q. And continuing until what point?

A. Up to and including 1947.

Q. Did you find the evidence on those questionnaires with regard to occupation and race to correspond with the information which you previously had?

A. Fairly correct so that in the margin of error I presented in the beginning, there will be no mistake for 1947. I find that in checking the affidavits, there is practically no error.

Q. That is, the occupation and race are practically the same on the questionnaires as on your own earlier investigation?

A. Yes.

Q. I want to show you Defendants' Exhibit 15 for identification which is a breakdown of grand jurors according to length of consecutive service over a period of recent years and ask you if you worked out that compilation from checking the records.

A. Yes.

Q. Does that reflect correctly the number of jurors who served consecutively for various periods of years?

A. That's right.

Q. And also those who served in more than one term, but not consecutively?

A. That's right.

Mr. Resner: I should like to offer the document in evidence. [272]

Mr. Crockett: No objection, if the Court please.

The Court: It may be received in evidence with the next ensuing number—the same number.

(Testimony of Harry Tatsumi Oshima.)

Mr. Resner: There is one more thing—have you a Census Report with you with regard to certain socio-economic data, Mr. Oshima?

Witness: Yes.

Q. What Census report is it?

A. This is taken from the United States Department of Commerce, Jesse H. Jones, Secretary—Bureau of the Census, 16th Census of the United States, 1940—Population—Comparative Occupation Statistics for the United States, 1870-1940.

Q. Does that include Hawaii and Maui?

A. No—this is a book which tries to give you a background of the tables that are contained in the United States Government publication on the “Population, Second Series, Characteristics of the Population, Hawaii.” It gives you the explanation of the categories which are used there.

Q. We have in evidence here, Mr. Oshima, as Defendants’ Exhibit 11 a publication of the United States Department of Commerce, “Population, Second Series, Characteristics of the Population of Hawaii.” With reference to Maui on certain pages thereof, is it in connection with that and particularly Maui that [273] the document that you refer to bears relationship? A. That’s right.

Q. What is the finding or statement of the government in that regard?

A. Well, I want to read a section from this volume about the significance of those occupational tables. “The socio-economic group——”

(Testimony of Harry Tatsumi Oshima.)

Mr. Crockett: If the Court please, is the witness going to read something from that?

Witness: I want to quote from him.

Mr. Crockett: May I be allowed to see it first.

The Court: Would you point out to Counsel——

Mr. Resner: Would you point it out to me and I will point out to Mr. Crockett.

(Witness handing to Counsel for Movants.)

Mr. Resner: Page 179, Mr. Crockett—"Significance of the Socio-Economic Groups". I might explain to the Court that there appears on the tables different occupational groups, as your Honor has seen—twelve different groups that are broken down. This is the Department of Commerce and the Bureau of the Census' analysis of the significance of the breakdown of occupational groups.

Mr. Crockett: If the Court please, may I have a minute or so to read it?

Mr. Resner: It is two paragraphs—only two [274] paragraphs marked, Mr. Crockett.

Mr. Crockett: If the Court please, we object to the reading of the portion offered by Counsel in evidence as having no bearing whatever upon questions before the Court—that it appears right in the opening paragraph that it is a generalization dealing with the socio-economic situation in the whole nation and not pertaining particularly to the County of Maui.

Mr. Resner: I don't think Counsel——

(Testimony of Harry Tatsumi Oshima.)

Mr. Crockett: It has no bearing whatever upon any issues in this case.

Mr. Resner: I don't think Counsel means to contend, your Honor, that Maui is not a part of the nation.

Mr. Crockett: I don't contend that at all, but I do contend that the conditions may or may not be different from those existing elsewhere in the nation. I don't see where this has any bearing on the issues of the case.

Mr. Resner: This has relationship to the significance of the tables in a general application.

(The Court reading document.)

The Court: If Counsel desires that in the record, the Court will overrule the objection. Whatever force and effect that may have on the question here is a problem I don't know. [275]

Mr. Resner: Would you read that, Mr. Oshima?

Witness: (Reading) "The socio-economic groupings are something more than large subdivisions of the nation's labor force and they are something more than mere summary groups constructed to facilitate the discussion of the broader aspects of the labor force. Each of them represents a distinctive part of the labor force by the use of its own peculiar characteristics and having its own peculiar significance."

And I skip one line.

(Reading further.) "So constituted it is evident that each of these groups represents not only a

(Testimony of Harry Tatsumi Oshima.)

measure segment of the nation's labor force, but also a large population group with a somewhat distinct standard of living—"excuse me—"standard of life economically, and to a considerable extent, intellectually and socially. In some measure also, each group has characteristic interests and convictions as to numerous public questions—social, economic and political. Each of them is thus a really distinct and highly significant social economic group. Proprietors, managers and officials form a very important and in many respects a very distinct, social economic group. They do most of the hiring and the firing. They pay a relatively large proportion of the taxes. They largely control capital. They largely determine (in normal times) what the lines [276] and extent of production shall be, and with their assistance they direct the work of a large portion of the other workers. It is evident that the standard of living of the proprietors and their views on social and economic questions frequently will be quite different from those of their employees." Page 179.

Mr. Resner: That is all.

The Court: Does it say anything in there, Mr. Oshima, as to whether a manager would be unable to take the same point of view as a laborer as to whether he got a punch on the jaw?

Mr. Resner: If your Honor please, I think I might take exception to the Court's question.

The Court: All right. The Court will withdraw the question, and leave it for further comment.

(Testimony of Harry Tatsumi Oshima.)

Mr. Resner: That completes my examination.

Cross-Examination

By Mr. Crockett:

Q. Mr. Oshima, with regard to the list which you identified as showing consecutive years of service of the grand jurors, what did you take into consideration? What did you mean by service?

Witness: Service in the panel of 50.

Q. That is, on the entire list?

A. That's right.

Q. Did you make any study of comparison of persons who actually here called to serve as grand jurors [277] and who were sworn before the Court as grand jurors?

A. No, I didn't.

Q. Did you find that any persons who had actually served had served any consecutive years?

A. No, I didn't.

Q. Did you notice whether or not those who were included on the list and who had actually served were not included on subsequent lists?

A. I don't know that—may I have that question again—I am sorry.

Mr. Crockett: Would you mind reading it, Miss Reporter?

Reporter: (Reading.) "Did you notice whether or not those who were included on the list and who had actually served were not included on subsequent lists?"

The Court: Do you understand the question?

Witness: No, I don't—I am sorry.

(Testimony of Harry Tatsumi Oshima.)

The Court: He means by service that they had finally been drawn out of the box and became active grand jurors considering cases—whether those men who had actually served on the Grand Jury active panel were returned to the list on the succeeding year.

Witness: No, I won't know that—because I didn't study the actual jury, those who were selected for jury, you see.

Mr. Crockett: In other words, you were just [278] looking at the list? A. That's right.

Q. And you noticed that certain names remained on there for several periods of years consecutively?

A. That's right—have nothing to do with the members who were selected out of the 50 into the actual Grand Jury. I had nothing—I did not study individuals who were selected out of the 50 into the Grand Jury.

Q. So then it is clear then that this list, this list that you have made, or this schedule you have made simply refers to those on the large list as filed by the Jury Commissioners? A. That's right.

Mr. Crockett: Will the Court permit me to ask this witness one or two questions based upon schedules or tables which were identified by him, if the Court please?

The Court: Does Counsel have any objection?

Mr. Resner: No, Judge.

Mr. Crockett: Referring to Table 3, which is marked Exhibit 7 and the third group of columns there—have you a set of this, Mr. Oshima?

(Testimony of Harry Tatsumi Oshima.)

Witness: Yes, I have, thank you.

Q. The column which is headed, "After Deductions for Male Non-Laborers From Classes 4-12"—may I ask you again, Mr. Oshima, does that total of 13,967 include non-voters, as well as voters? [279]

A. Yes.

Q. And then turning to——

The Court: While you are on that column on this table, is the percentage symbol—you say that ought to come off? In that column, it says "per cent". That ought to come off?

Witness: Yes, that should be taken off.

The Court: Any objection, Mr. Counsel if I just mark it and initial it as out?

Mr. Resner: I think his Honor refers to this. (Indicating.)

The Court: I see it needs another treatment—the percent goes only to this column. (Indicating.) Look at the way I have marked it and see if that—

Witness: That's right.

The Court: You notice how I have marked it so that the per cent refers to the column over which my line leaves it now.

Mr. Resner: That is correct.

Witness: That is correct.

The Court: The per cent belongs to one column. It is written too close.

Mr. Resner: It belongs only to the last column.

The Court: That's right.

Mr. Resner: "From—4-12" has reference to deductions from classifications 5 through 12.

(Testimony of Harry Tatsumi Oshima.)

The Court: That is right. That is what I understand now. [280]

Mr. Crockett: Then in this same table, that is, the first column, your total of 21,865—as I understand, that refers to male and female workers. That is including citizens and non-citizens?

Witness: That's right.

Q. Does that include as female persons, females who might be eligible to vote, but who would not be workers?

A. That's right. That column will include such persons.

Q. That is, women who are not workers—that is, for instance, a housewife who has no occupation but who might be eligible to vote—is she included in those figures?

A. That's right. Well, that is of course a moot question because to a large extent I would say they would not be included, but I was thinking of the category 10, farm laborers, unpaid family workers. Few of such women are included under there because the Census considers these people, even though they are housewives, helping out with the work of the farm, and therefore gainfully employed, although not paid. So that it will include—but not all—but it will include.

Q. Would it include the wife of a doctor or lawyer?

A. Depends upon whether she has any gainful job.

(Testimony of Harry Tatsumi Oshima.)

Q. If she is not gainfully employed?

A. It will not. [281]

Q. It wouldn't include the wife of any ordinary laborer who was not employed outside—as I say, not a farm worker?

A. That's right.

Q. So that column has no relation whatever to the actual number of voters?

A. No, no relation.

Q. Now, referring to Table 5—you have the column there which is headed, "Qualified", which has a total of 12,265. What does that include again, may I ask?

A. That includes, of course, those individuals whom I have divided into those five categories. It includes also such individuals who form my definition of qualification, namely, citizens; namely, male and also educational qualification, which I for this purpose defined as four years of school completed—who would under these major qualifications become qualified for jury service.

Q. In the first column, you have the total of 21,865.

A. That's right.

Q. And that corresponds with the total of the first column on Table 3 of 21,865?

A. Yes, the total does.

Q. And you just told me that the total, 21,865, did not include those women who are housewives, not earning in an occupation, who might otherwise be voters?

A. That's right. [282]

Q. Now, you say the 21,865 includes all the voters?

(Testimony of Harry Tatsumi Oshima.)

A. No, I have never said that the 21,865 included all the voters. That will include—the same total will include non-voters also.

Q. The 21,865 will include non-voters also?

A. That's right.

Q. But it doesn't include those women who might be qualified to vote but not working?

A. That's right.

Q. What does your 12,669 apply to?

A. That first of all applies to only males.

Q. Which one is that?

A. That 12,669 which you just mentioned. Obviously, you must be a male before you are qualified for jury service—so that is that column.

Q. In your figure for the County of Maui did you include the persons who reside in the leper settlement, Kalawao?

A. Yes, these are included—about 400 or so.

Q. You didn't take into consideration the fact that persons in Kalawao are not subject to jury duty in this circuit, did you?

A. I was conscious of the fact, but the division of 400 people into these different categories would be a very difficult statistical device so that I merely made this assumption that the people in Kalawao will be distributed in the five categories in such a way that it will not affect the percentage. [283]

Q. In other words, you have included them in the percentage? A. Yes.

Mr. Crockett: That is all.

(Testimony of Harry Tatsumi Oshima.)

Further Redirect Examination

By Mr. Resner:

Q. Is your point in that regard that they would be equally distributed over the classifications so that the percentages would not be changed?

Witness: Yes, so the percentages, which are the important thing, will not be changed, first of all; secondly, the magnitude, 455, is so small that even if there is a certain lumping, which I doubt, in one particular category, there will be no influence on the statistics on the percentages.

Mr. Resner: That is all.

(Witness excused.)

Mr. Resner: I assume, your Honor, that Mr. Oshima may be excused. I don't want him again—just from the standpoint of the other side.

Mr. Crockett: We have nothing further from him. [284]

AUGUSTINE POMBO

having been previously sworn, resumed the stand and testified as follows:

Further Direct Examination

By Mr. Resner:

Q. Mr. Pombo, I will come back to you. We were going to have you go over the list and point out what you described——

Witness: Seventeen haoles—still sticking to the 17 haoles.

(Testimony of Augustine Pombo.)

Q. All right. Let's go down the list. I might say if you could speak a little slower, it would help us here. I think the best way would be to go down the list.

A. Alfred S. Burns is a haole. Edward S. Bowmer is a haole. Ray M. Allen is a haole. Winford Percy——

Q. Let me interrupt you here—Louis Sequeira——

A. No, he is Portuguese.

Q. He is a caucasian though.

A. Well, I don't know he is. I don't know what you call him—his father came from Cape Verde and his mother was very much Portuguese—caucasian.

Q. Yes.

A. But he is classed like I am—with the Hawaiians, Chinese—which I am not sorry at all. As a Jury Commissioner, a haole is a haole and not Portuguese.

Q. Let me ask you—Mr. Sequeira to your knowledge [285] is a caucasian?

A. He is Portuguese. I don't even refer to this caucasian.

Q. He is a Portuguese, a caucasian.

A. I am so used to be called Portuguese that I have stuck to it.

The Court: The witness is trying to tell you something, Mr. Resner, that you would learn if you lived here—that the Cape Verde Portuguese differentiate themselves from the Mainland Portuguese.

(Testimony of Augustine Pombo.)

Mr. Resner: I see. What I am getting at is an anthropological question, if your Honor please, and I am merely trying to determine whether Mr. Pombo——

Witness: Anyway, he is not haole as far as I am concerned.

Mr. Resner: But he is a caucasian?

A. He might be—I don't know what they call him. His father is not called a Portuguese.

Q. Is a Portuguese in your opinion a caucasian?

A. Well, he is supposed to be elsewhere, but not in Hawaii.

Q. I guess that is about as good an answer as we can get at this point. Next is Mr. Percy——

A. Joseph H. Trask.

Q. Mr. Percy.

A. He is haole. Joseph H. Trask is haole. Paul A. Haygood, haole. [286]

Q. What about Mr. Rezents?

A. Portuguese.

Q. Mr. Ayers?

A. He is not haole. Glenn H. Fredholm——

Q. What about Mr. Haygood?

A. He is a haole. Glenn H. Fredholm, No. 21—
H. S. Peterson, he is haole.

Q. Yes—Manuel De Ponte?

A. He is no haole. He is Portuguese. Frank W. Broadbent, he is haole. James M. Fleming, he is haole.

Q. Let me stop you with Mr. Costa.

(Testimony of Augustine Pombo.)

A. He is Portuguese.

Q. Mr. Fleming?

A. James M. Fleming, E. Stanley Elmore, Albert D. Waterhouse, Andrew Moodie, Robert P. Bruce——

Q. What about Mr. Feiteira?

A. He is Portuguese. Richard H. Baldwin——

Q. What about Mr. English?

A. He is not haole. He is part haole—he is married a Hawaiian and he is classed——

Q. What about Mr. Coleman?

A. He is part-Hawaiian — married to a Hawaiian. He associates with them, not the haoles. He is classed as Hawaiian.

Q. Mr. Nunes?

A. Portuguese. Mr. Richard H. Baldwin, he is a haole. Mr. Albert Simpson—— [287]

Q. Mr. Holt?

A. Mr. Holt not a haole—he is Hawaiian.

Q. Mr. Plunkett?

A. He is not considered a haole—he is married to a Hawaiian. He is Hawaiian.

Q. Now we are on Mr. Simpson.

A. Albert G. Simpson—he is a haole. Edward H. Baldwin—he is a haole. That's all.

Q. Well, let's go down the list. What about Mr. Goodness?

A. He is no haole. His grandfather was a haole.

Q. Mr. Thompson?

A. I don't consider him a haole. He don't as-

(Testimony of Augustine Pombo.)

sociate with them, either—not in his official functions.

Q. Just what does that mean, Mr. Pombo?

A. It is hard to explain to you—you don't live in the Islands. If you lived here, you would find out.

Q. I am seeking information.

A. Well, we are brought up that way.

Q. What about Mr. Friel?

A. He is not a haole.

Q. What is he to you?

A. More Hawaiian than anything else—very little haole, if any.

Q. What about Mr. Charles E. Morris?

A. Oh, I forgot that—I am sorry. What number is that? [288]

Q. 48.

A. Oh, I didn't turn it. Yes, he is haole. I worked for him—know him.

Q. Kenneth Auld? A. Not haole.

Q. You know what he is? A. No, no idea.

Q. Paul Reinhart?

A. Paul Reinhart—I got no idea.

Q. He may be?

A. He may be a haole by the name.

Q. Let me ask you this—going over that list and describing as you have those who are haole, so-called, and the number that you have now definitely described on the list, how does that compare with the population as a whole of Maui with regard to the number of haoles there are on Maui?

(Testimony of Augustine Pombo.)

A. There are not very many.

Q. Do you know approximately how many?

A. No, I got no idea.

Q. Would it be more than two or three thousand?
A. I got no idea.

Q. Would you say that the Grand Jury has an overwhelming representation of haoles on it?

A. No, I don't think so.

Q. By comparison with the population, by comparison with their number in the population?

A. Out of the 50 that we have to pick on, we got [289] very few haoles—17.

Q. The question is this—not on the list of 50, but assuming that—I don't know whether there are 17 or more, now. We will have to go through the record and add them up. But is there a greater percentage of haoles on the Grand Jury than there are haoles in the population of Maui?

A. I wouldn't know.

The Court: Did you pick them because they were haoles?

Witness: No, I pick them because I want to give them something to do—if they want a chance to run the country——

The Court: Did you pick them because of their fairness?

Witness: Because they are fair. They are in court—they have to be fair. There is another jury—in case it don't go right on the Grand Jury, the trial jury is waiting for them.

(Testimony of Augustine Pombo.)

Mr. Resner: What did you mean a moment ago—you said they wanted a chance to run the country?

A. Well, they do run the country.

Q. How do you mean that?

A. The majority—lots of these—the Baldwins—they own the place.

Q. I see.

A. And if they want to run politics, just as well give them something to do in courts. They can't [290] run it in here because the population getting too independent.

Q. Let me ask you this—if there are 17 haoles on this list of 50—that amounts to 35%—is 35% of the population of Maui haole?

A. I wouldn't know.

Q. Let me ask you this, to go back over these names again, starting where we left off——

A. What number?

Q. No. 7, Mr. Cornwell. Do you know him?

A. Yes. His grandfather was a haole.

Q. I see. Do you know where the boy works?

A. I see him driving this truck for the Air Ways.

Q. No. 8 is Yong Kam Chew, who is Chinese.

A. Yes.

Q. You know him? A. I know him.

Q. You felt he was qualified?

A. He is a fair Chinaman.

Q. No. 9 is Ray Allen. A. Yes.

Q. And he is manager of Wailuku Sugar Company? A. Yes.

(Testimony of Augustine Pombo.)

Q. You know him personally?

A. I know him.

Q. No. 10 is Wai Ken Tom. Do you know him?

A. I do.

Q. He is Chinese? [291] A. Yes.

Q. And you consider him——?

A. A good juryman.

Q. Most of these that we have gone over now, or most of them on the jury list as a whole—that is, 30 of them didn't return questionnaires. Mr. Pombo. Out of the 50, 20 had questionnaires; 30 did not. Of the other 30, did you know them personally?

A. I know a majority of the fellows. A lot of them don't send questionnaires, we put them on anyhow if I know them.

Q. You put them on if you know them?

A. Yes. If I submit their name to the board and if the other commissioners want them, they put him in.

Q. Would you put on a person that you did not know?

A. I would find out. In my work, I go over the Island quite a bit and I usually check up, find out who he is.

Q. Would you put anyone on the Grand Jury that you didn't know personally?

A. No, not exactly. If he has friends that know him well and they say he is a good man, we take a chance.

Q. If you knew nothing about a person, but you

(Testimony of Augustine Pombo.)

found him otherwise qualified according to age, citizenship, residence, sex, schooling and so on and so forth, but you knew nothing else about him, would you put him on the jury?

A. If I couldn't find another man for the jury that would be qualified, I would put him on.

Q. As against the man you know?

A. If I can get one that I know is good, I put him on.

Q. Here is Mr. Ezell. You know him?

A. I don't know him very well. I know who he is married to.

Q. You know he is working for the air lines?

A. Yes, I know he is working for the air lines.

Q. Do you know Mr. Sequeira?

A. Yes, I know him well.

Q. He is a friend of yours?

A. I went to school with him.

Q. You know Mr. Percy? A. I know him.

Q. What does he do?

A. He used to work with the air base at Kahului.

Q. You know him well?

A. I know him well.

Q. Mr. Nakamoto?

A. I think I do—I am not sure.

Q. Do you know what he does? A. No.

Q. Irving Maeda? [293] A. I know him.

Q. What does he do?

A. He is an accountant for these different stores that they handle.

(Testimony of Augustine Pombo.)

Q. Do you know Mr. Trask?

A. Yes, I do.

Q. What does he do?

A. He is up in Paia—Bank of Hawaii.

Q. Ernest Rezens, you know him?

A. I know him.

Q. And you know what he does?

A. To tell you the truth, I think he runs a—
fireman—or locomotive or something.

Q. Do you know Mr. Ayers?

A. Yes, I do. Know his family.

Q. And he is employed where?

A. I don't know. I don't know where he works.

Q. Mr. Haygood?

A. I don't know him. He is down Coca-Cola
plant.

Q. Mr. Saka?

A. I am not sure whether I do or not.

Q. Mr. Fredholm? A. I know who he is.

Q. What does he do?

A. He is down Kahului Railroad, charge of
trucking, I think.

Q. Do you know who is the owner of the Ka-
hului Railroad? [294]

A. That is a corporation. The Baldwins prac-
tically control that.

Q. Do you know Mr. Peterson?

A. Yes, I do.

Q. What does he do?

(Testimony of Augustine Pombo.)

A. He is manager of the Puunene Store at Kahului.

Q. Do you know who owns that store?

A. I do—A & B.

Q. Now, Manuel De Ponte—do you know him?

A. Yes, I do.

Q. What does he do?

A. Well, I don't know whether he is connected with the Personnel Department—he got demoted now—running a booze joint now.

Q. Which Personnel Department?

A. Kahului Railroad—they put somebody over him.

Q. Mr. Broadbent?

A. Yes, I know him. He is with the H. C. & S.

Q. As an assistant manager?

A. They say he is—I don't know.

Q. Mr. Ajifu—he was the Japanese boy who was hurt in the war?

A. Yes.

Q. Mr. Alu?

A. I know him.

Q. What does he do?

A. I think he still connected with H. C. & S. machine shop. [295]

Q. And Mr. Jack Costa?

A. He still with H. C. & S.

Q. What does he do?

A. I don't know if he is the electrician.

Q. You know him?

A. I know him.

Q. You know James Fleming?

A. I know him. He is a hunter—likes to hunt.

(Testimony of Augustine Pombo.)

Q. He is manager of the Shell Oil?

A. Yes.

Q. Do you know E. Stanley Elmore?

A. Yes, I do.

Q. What does he do?

A. He used to be an undertaker and now automobile man.

Q. And Albert Waterhouse?

A. Know him, but never talked to him—up in Paia.

Q. Maui Agricultural? A. Yes.

Q. Do you know what he is there?

A. No, I got no idea.

Q. Mr. Feiteira, you know him?

A. I know him.

Q. What does he do?

A. I don't know what he does. I know he works Maui Agricultural Company.

Q. And have you known him a long time? [296]

A. Yes, I have.

Q. Andrew Moodie?

A. He is manager of the Paia Store—Maui Agricultural Store.

Q. I beg your pardon?

A. He is manager of the Paia Store—Maui Agricultural Store.

Q. Do you know who is the owner of Maui Agricultural Company?

A. I think it is A & B.

Q. With regard to Robert P. Bruce, do you know him? A. Yes, I do.

(Testimony of Augustine Pombo.)

Q. And he is the manager of the East Maui Irrigation Company?

A. I don't know if they gave him a title. He is in charge of water, I know.

Q. Do you know Mr. H. W. English?

A. Yes, I do—very well.

Q. What does Mr. English do?

A. He is head of the automobile division, Paia—Maui Agricultural Company.

Q. Maui Agricultural Company? A. Yes.

Q. Do you know Mr. Gottlieb Coleman?

A. Yes, I do.

Q. What does Mr. Coleman do?

A. Tractor department, Maui Agricultural Company. [297]

Q. Do you know what he does there?

A. Seems to me he does repair work.

Q. Do you know Mr. Edmund Nunes?

A. Yes, I do.

Q. You know him personally?

A. Yes, I do.

Q. And he is the District Overseer of Maui County? A. Yes.

Q. And you know Mr. Richard H. Baldwin?

A. Yes, I do.

Q. And you know what he does?

A. He is manager of his father's ranch.

Q. And you know Mr. Anthony A. Tam?

A. Not very much. Know who he is.

Q. Is he a farmer?

A. Got no idea what he does.

(Testimony of Augustine Pombo.)

Q. Walter W. Holt?

A. I know him. He is with the Board of Agriculture and Forestry—a good juror.

Q. Edwin K. Muroki—do you know him?

A. I think I do, but I don't remember the name.

Q. You don't know much about him?

A. I don't know much about him.

Q. Mr. John Plunkett, you know him?

A. Yes, I do.

Q. What does Mr. Plunkett do?

A. He is head of the Water Department out there.

Q. For East Maui Irrigation Company? [298]

A. Yes, East Maui Irrigation Company.

Q. And Mr. Albert Simpson?

A. I think he works for Fagan.

Q. He is the vice-president of Hana Hotel?

A. I don't know what he is, but I see him there in the Hana Hotel.

Q. I see. And Mr. Edward H. Baldwin—do you know him? A. I know him.

Q. What does he do?

A. He runs his own ranch out there at Ulupalakua.

Q. Mr. Henry S. S. Fong?

A. Up at Kula. He is in contracting right now.

Q. Do you know him? A. I do.

Q. Charles Goodness, do you know him?

A. I know him.

Q. What does Mr. Goodness do?

(Testimony of Augustine Pombo.)

A. He used to work with the County. I don't know what he does now.

Q. Mr. Charles E. Thompson?

A. He is farming—been raising hogs and cattle for a long time.

Q. You know him, too?

A. I do—a good democrat.

Q. A good democrat? A. Oh, yes.

Q. Any other good democrats on this, Mr. Pombo? [299]

A. Not very many—most of them turning republican.

Q. I take it you are still a good democrat?

A. I am still a good democrat. I will never turn.

Q. Mr. Stanley C. Friel—do you know him?

A. I know him.

Q. What does he do?

A. Connected with CPC.

Q. What is that?

A. California Packing Corporation.

Q. Oh, yes—at least so it is called in California.
Charles E. Morris—do you know him?

A. He is over Molokai.

Q. What does he do?

A. Runs a show house over there.

The Court: He is the "Mayor of Kaunakakai"?

Witness: Yes, hard boiled—I worked for him once here.

(Testimony of Augustine Pombo.)

Mr. Resner: Kenneth Auld?

A. He is over Molokai.

Q. And what does he do?

A. Good football player. He works for the pineapple people there.

Q. Is he a department superintendent?

A. I wouldn't know.

Q. Which company?

A. I don't know who he works for.

Q. Paul Reinhart? A. I don't know. [300]

Q. He is listed as an assistant superintendent of Libby, McNeill & Libby. You don't know him at all?

A. No. I probably seen him campaigning.

Q. Yes. How many democrats would you say there are on this jury? A. I wouldn't know.

Q. Do you know approximately?

A. Well, I know Charlie Thompson well. He is one of them. The rest of them—they blow hot and cold the same time.

Q. The rest of them you cannot be sure of?

A. Not sure of.

The Court: Is that because they are independently minded or because they have somebody else's color?

Witness: I don't know. I think they are looking to see who is handing out the most money.

The Court: Oh, I see.

Mr. Resner: Mr. Pombo, with regard to farm workers on this jury, there are no farm workers on it, are there?

(Testimony of Augustine Pombo.)

Witness: I wouldn't know whether there are any or not.

Q. Can you point one out to me—farm laborer?

A. I wouldn't know.

Q. Are you familiar with the fact that, Mr. Pombo, there are close to 9,000 farm laborers here in Maui? [301]

A. 9,000? Where are they all situated?

Q. I am asking you that fact.

A. The only farms are in Kula, and they are not very many.

Q. Farm laborers include persons in the pineapple and plantations and mills.

A. Oh, what I meant by farmers—those fellows who plant cabbages and all that stuff.

Q. No, the term is used to mean those persons who work in the fields and mills. Is one of those persons who work in the fields and mills—pineapple and sugar—do you know any among these 50 on the list who are in that classification?

A. My friend, the union man. He is working for Wailuku Sugar. He is not a farmer. I don't know whether you call them farmers. We don't call them farmers.

Q. I am merely giving you the description as used by the Census, Mr. Pombo.

A. I don't know. I would have to look over the questionnaires to check up on them.

Q. Here are 20 of them.

(Counsel for Movants handing to Witness.)

Q. 20 out of 50. A. There is 50 here.

(Testimony of Augustine Pombo.)

Q. I understand, but you don't have questionnaires for 30 of them. [302]

The Court: Well, this research is obviously going to take the witness a little time. We had better declare a recess between now and tomorrow morning.

Witness: Are you closing up shop?

The Court: We are closing up shop, Mr. Pombo?

Mr. Resner: Well, the point is, Mr. Pombo, between now and tomorrow—we have union hours in court—between now and tomorrow, if you would look at that list and see on this last question of farm laborers, and if you would remember to think over the 50 of any such persons that you know are farm laborers.

The Court: We will take a recess until nine o'clock tomorrow morning.

(The Second Circuit Court adjourned at 3:57 p.m.) [303]

Wednesday, September 17th, 1947, 9:00 A.M.

Deputy Clerk: Criminal No. 2412, Territory of Hawaii, vs. Abraham Makekau, et al., and Criminal No. 2413, Territory of Hawaii vs. Diego Barbosa, et al.

The Court: Does Counsel assure the Court that the defendants are present?

Mr. Resner: I think they are, your Honor.

Mr. Crockett: The Prosecution is ready to proceed, if the Court please.

Mr. Resner: Mr. Pombo.

AUGUSTINE POMBO

having been previously sworn, resumed the stand and testified as follows:

Further Direct Examination

By Mr. Resner:

Q. Mr. Pombo, of the labor force—that is, people who are considered as workers in Maui County, what percentage of them is Filipino, to your knowledge?

Witness: You mean in the plantations?

Q. In the plantations, in the canneries?

A. I have got no idea.

Q. In the fields and things of that character?

A. I have got no idea. [304]

Q. Would you say as many as 50% of the laboring force?

A. I, wouldn't even try to guess it.

Q. Have you got any idea?

A. No, I have never gone into that any time.

Q. Well, would you say that a substantial number of the workers are Filipinos?

A. Oh, yes, I would say that.

Q. Let me ask you this, Mr. Pombo. Is there a Filipino on the present Grand Jury?

A. No.

Q. Within your recollection, has there ever been a Filipino on the Grand Jury? A. No.

Q. Has there ever been a Filipino called for the Grand Jury panel list of 50 within your knowledge? A. No.

(Testimony of Augustine Pombo.)

and on the following sheet, there are among the Filipino women a total of 84 registered voters in 1946. Did you send any questionnaires out to the prospective grand jurors, or jurors for that matter, in the year 1946 for use in selecting the 1947 jury?

A. The Judge's secretary is doing it now.

Q. No, the question is whether in 1946, last year, you sent questionnaires out to these different precincts throughout the County for use in selecting a Grand Jury for 1947. Did you do that?

A. I don't remember using the 1946——

The Court: He means—were questionnaires sent out last year before you began to work on selecting your jury?

Witness: Oh, yes. We sent out questionnaires before we began to work.

Mr. Resner: Now, in 1946 you sent questionnaires out throughout the County?

A. Yes.

Q. For their returns to see who might be eligible to serve as jurors this year, is that right?

A. Yes.

Q. Did you examine those questionnaires when they came back, Mr. Pombo?

A. We go through every one. [308]

Q. Did you observe in those questionnaires the names of qualified Filipino persons?

A. No, I didn't. I don't know whether we have sent any to Filipinos. I don't quite remember.

(Testimony of Augustine Pombo.)

Q. I have in my hand, Mr. Pombo, a file which is called, "19th Precinct, Haiku." Have you ever seen this file before?

A. Yes, I guess I have.

Q. Well, do you know without guessing?

A. Yes, I have.

Q. When did you see it last?

A. When we were—when we got to work selecting the jury.

Q. Let's go through it. I find here an affidavit returned on October 8th, 1946—and that is about the time you were selecting the Grand Jury—

A. October he sent it in?

Q. October 8th, 1946. Is that about the time you were selecting the Grand Jury?

A. No, let me see. No, this goes out way ahead of time—wait a minute—after this comes in—

Q. When did you meet to select the jury for the last time?

A. I don't quite remember how many times.

Q. I know you said you met a number of times. When was the time you met to select the list of 50?

A. Every time we sat, we selected some.

Q. And when was the last time you sat? [309]

A. I don't know. Judge Wirtz mentioned the dates, yesterday. He has got the dates.

Q. Yesterday Judge Wirtz said that the work was completed on December 11th, 1946.

A. If he said it, he is right because he keeps the record.

(Testimony of Augustine Pombo.)

Q. Have you ever studied the registration lists to find out whether there are Filipinos qualified to serve as jurors, Grand Jurors?

A. Just very few.

Q. Just very few? A. Just very few.

Q. Have you any idea how many?

A. No, couldn't tell you offhand. The average Filipino—I think we would have to call him in and talk to him ourselves rather than look through a questionnaire. They smart fellows, but lot of [305] them hardly speak English.

Q. Well, did you ever make any effort to get a Filipino on the Grand Jury?

A. Well, we tried to get them, but we figured until a lot of them joined—I mean just became citizens. A lot of them are pretty smart fellows.

Q. What efforts did you make to get Filipinos on any of the Grand Juries?

A. We didn't go out of our way to get any of them.

Q. I want to show you, Mr. Pombo, the Defendants' Exhibit 17. This is a list of registered voters.

A. What year.

Q. 1946.

A. Well, the list that we selected, the list in the questionnaires, the present questionnaires, was selected from the 1944 list—election list.

Q. The present Grand Jury?

A. The present Grand Jury.

Q. Was selected——?

(Testimony of Augustine Pombo.)

A. I am pretty sure of that.

Q. —From the 1944 list? A. Yes.

Q. Of registered voters?

A. Yes. Because we began to pick our jurymen sometime in September. [306]

Q. Of what year? A. Of last year.

Q. You started to pick your Grand Jury in September of 1946? A. Yes.

Q. And you used what sources for that?

A. 1944 general election list.

Q. 1944 general election list? A. Yes.

Q. And there was no 1945 list?

A. No. There is no election in 1945.

Q. There was no election in 1945. All right. Let me point out something here to you Mr. Pombo. In the 1st precinct, Lanai City, there are 18 Filipino males as registered citizens. A. Yes.

Q. In Honolua, there is one. In Mala, there are six. In Kam III there are four. In Wailuku Elementary School, there are four. In Iao Elementary School, there are four. In Piihana, there is one. In Papohaku, there are four. In Waihee, there is one. In Kahului, there are three. In Puunene, there are 13. Spreckelsville, one. Lower Paia, three. Upper Paia, 7. Keahua, one. Haiku, 12. Huelo, two. Keane, one. Hana, three. Kipahulu, one. In Keokeo, there are four. In Kihei, there is one. In Pukoo, one. In Kaunakakai, there are three. In Maunaloa, four—a total of 103 men. [307]

A. That is the 1946 list?

Q. The 1946 list, yes. That is just the men—

(Testimony of Augustine Pombo.)

and on the following sheet, there are among the Filipino women a total of 84 registered voters in 1946. Did you send any questionnaires out to the prospective grand jurors, or jurors for that matter, in the year 1946 for use in selecting the 1947 jury?

A. The Judge's secretary is doing it now.

Q. No, the question is whether in 1946, last year, you sent questionnaires out to these different precincts throughout the County for use in selecting a Grand Jury for 1947. Did you do that?

A. I don't remember using the 1946——

The Court: He means—were questionnaires sent out last year before you began to work on selecting your jury?

Witness: Oh, yes. We sent out questionnaires before we began to work.

Mr. Resner: Now, in 1946 you sent questionnaires out throughout the County?

A. Yes.

Q. For their returns to see who might be eligible to serve as jurors this year, is that right?

A. Yes.

Q. Did you examine those questionnaires when they came back, Mr. Pombo?

A. We go through every one. [308]

Q. Did you observe in those questionnaires the names of qualified Filipino persons?

A. No, I didn't. I don't know whether we have sent any to Filipinos. I don't quite remember.

(Testimony of Augustine Pombo.)

Q. I have in my hand, Mr. Pombo, a file which is called, "19th Precinct, Haiku." Have you ever seen this file before?

A. Yes, I guess I have.

Q. Well, do you know without guessing?

A. Yes, I have.

Q. When did you see it last?

A. When we were—when we got to work selecting the jury.

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A. October he sent it in?

Q. October 8th, 1946. Is that about the time you were selecting the Grand Jury?

A. No, let me see. No, this goes out way ahead of time—wait a minute—after this comes in——

Q. When did you meet to select the jury for the last time?

A. I don't quite remember how many times.

Q. I know you said you met a number of times. When was the time you met to select the list of 50?

A. Every time we sat, we selected some.

Q. And when was the last time you sat? [309]

A. I don't know. Judge Wirtz mentioned the dates, yesterday. He has got the dates.

Q. Yesterday Judge Wirtz said that the work was completed on December 11th, 1946.

A. If he said it, he is right because he keeps the record.

(Testimony of Augustine Pombo.)

Q. Now this questionnaire was returned on October 8th, 1946, two months before the work was completed. You see October 8th, 1946?

A. Yes.

Q. Returned it before October 8th, 1946. This gentleman filled it out on the 28th of September, 1946, and this shows that a voter by the name of Joseph Dias Barona, who was born at Hilo, Hawaii, on October 8th, 1918, was 27 years old, and has been in the Territory all of his life, and is married and is a Filipino by origin—at least his father and mother are—and that he is employed as a chauffeur at the Naval Air Station and that his occupation was laborer and truck driver, and he was a student at St. Anthony's School and finished the 9th grade—did you investigate that man for Grand Jury service—duty?

A. We probably did. We have had others a whole lot better than he was.

Q. Others of Filipino nationality?

A. No, Mr. Resner, I would like to—we going through a lot of trouble in going out picking [310] nationalities. I can cut that off short. I don't pick a man by his nationality. I pick a man on his merits. If I going over the questionnaires, if I think he is a good man, regardless of whether he is Japanese, Portuguese or haole, I ask the rest of the Jury Commission to include him in the list.

Q. How do you explain the fact that there has never been a Filipino serving as a grand juror on Maui?

A. We haven't come to it.

(Testimony of Augustine Pombo.)

Q. Why not?

A. He is just as well a citizen as anybody else—I don't consider him a Filipino either—we just haven't. Only 50 in the Grand Jury out of how many voters in 1945. Pretty hard to put them all on the Grand Jury.

Q. Yes, but why is it that with a substantial portion of the labor force of Maui Filipino—and of course you recognize that the Grand Jury is supposed to be a cross-section and representative of the community?

A. Well, it is.

Q. It is supposed to represent all the groups in the community.

A. It is.

Q. And a large group of the community is Filipino.

A. I don't consider that. I don't draw the color line. You are a haole, you might do it—I don't.

Q. I am just trying to get the record straight.

A. I pick a man on his merits. If he is a Hawaiian, Portuguese or Japanese—don't make any difference to me.

Q. Try to answer the question, Mr. Pombo.

A. We just didn't come to him.

Q. A substantial portion of the population of Maui is Filipino, isn't it?

A. Might be, I am not sure.

Q. There isn't any question in your mind about it?

A. I haven't looked at it. I can't give you any figures. Maybe.

(Testimony of Augustine Pombo.)

Q. Suppose in a few minutes I show you the figures from the United States Census.

A. If you can show me the figures.

Q. But you do concede, of course, that a substantial portion of the labor force is Filipino?

A. I wouldn't doubt that—I guess they are. I wouldn't know. I haven't seen any figures.

Q. I want you to give me your best answer as to why there has never been a Filipino on the Grand Jury?

A. We just have a lot of other men a lot better.

Mr. Crockett: May I object to the question?

The Court: Already answered.

Mr. Resner: Let us continue further on. We see next on one of these questionnaires which was returned on October 3rd, 1946 the name of Vincente Engoring, who was born February 10th, 1925 at Kapahulu, [312] Maui, lived here all of his life, who is employed by Libby, McNeill & Libby, and who had attended the Hana School and finished the 9th grade. Did that questionnaire ever come to your attention before? A. Must have.

Q. Did you consider this gentleman for jury service? A. Must have—I don't know.

Q. Did you ever call in a Filipino citizen to talk with such a person and find out whether such a person qualified for jury service?

A. No, we haven't.

Q. The next person is Frank Estrella, Jr., who lives in Puunene, Maui, and who was born on Sep-

(Testimony of Augustine Pombo.)

tember 11th, 1919 at Haiku, Maui, and who has lived here all of his life.

A. At Puunene Dairy.

Q. Yes, I see that.

A. That is owned by H. C. & S. Company.

Q. Yes, I see that. And I see also that he is a plumber's helper and truck driver; that he went to Haiku School and Lahainaluna High School; that he finished the 10th grade. Did you ever consider him for jury service? A. We must have.

Q. Not "you must have"—did you?

A. We must have. We got so many to go over.

Q. Do you have any distinct recollection of any Filipino that you considered for jury service?

A. How do you know this fellow is Filipino?

Q. He states there the nationality of his father is Filipino. A. Portuguese.

Q. The nationality of the mother is Portuguese. But I am asking you—do you have any recollection, as you sit here, of any Filipino that you seriously considered for jury service?

A. We must have. We went through this. We found others a whole lot better; so we picked others.

Q. What was the standard that you employed whereby you decided others were better than the three cases mentioned so far?

A. We go over the list. I rather have a man I know is a good juryman personally than the fellow I don't know on paper.

The Court: What do you mean by the term, "good juryman" that you used?

(Testimony of Augustine Pombo.)

Witness: A man that is intelligent—that is what I consider.

The Court: Did you take into consideration whether or not he had a reputation so he was trusted by neighbors?

Witness: Yes, we do—whether he has been in jail before.

Mr. Resner: Mr. Pombo, I mean you had no information that showed that these gentlemen whose names we read were not intelligent.

A. Well, just as I say, there are other fellows I feel are better.

Q. Of the names we have gone over, have you any information which indicated that they are not intelligent?

A. No, nobody told me they were not.

Q. Have you any information which indicated that they don't have good moral character and have been in jail?

A. No. I don't know anything about it. All I know what they appear on here. (Indicating.)

Q. So far as you can tell from those questionnaires, they appear to be perfectly competent and qualified for jury service?

A. They look all right on paper.

Q. The test you really used is that you selected people you knew personally?

A. I do that quite a bit.

Q. The next person is Gilbert Eufonio Gonzado whose address at home is Baldwin Camp House No.

(Testimony of Augustine Pombo.)

31; who was born at Kapulena, Hawaii; who has lived in the Territory all his life; who states his nationality—the nationality of his father and mother as Filipino; that he is a chauffeur; that for the past five years he had been in the United States Army; that he had gone to Honokaa High School and Kalakaua High School; and that he had finished the 9th grade in school. [315] This was returned, dated at least October 3rd, 1946. Was this gentleman considered for jury service?

A. We must have gone over it.

Q. Next is Ortello, Joseph Gumba, whose address is Post Office Box 382, Rice Camp, Haiku, Maui; who was born September 13th, 1920 at Haiku; who gives his parents as Filipino; who states that he has been in the army the past five years; and that he had gone to the Halehaku School; that he had finished the 3rd grade. He returned this on October 2nd, 1946. Was this gentleman considered for jury service?

A. He must have been.

Q. Next we see Francis Damion Segundo, whose home is Haiku, Maui; and who was born July 16th, 1922; at Honolulu; who lived in the Territory all of his life; whose parents were Filipino—his father, Filipino and his mother, Hawaiian; employed at Libby, McNeill & Libby; he is a truck driver; gone to the Haiku School through the 8th grade. He returned this on October 3rd, 1946. Was this gentleman considered for jury service?

A. He must have been.

(Testimony of Augustine Pombo.)

Q. Here is Salvador Seno, whose home is at Kuiaha, Maui; who was born at Kohala, Hawaii, on June 20th, 1913; lived in the Territory all of his life, and on Maui 19 years; parents, Filipino; occupation is [316] carpenter; who had gone to Maui High School through the 9th grade. He returned this questionnaire on October 6th, 1946. Do you know this gentleman?

A. I don't know who he is, but we must have gone over——

Q. When you went over any of those names, wasn't there anything that indicated to you you ought to call him in?

A. No, we find other men who are better; so we use the other.

Q. How did you determine that other men were better, Mr. Pombo, without investigating these men further?

A. Well, we picked them—we have got the jury. You have seen the jury—a darn fine bunch of 50 men there.

Q. Would you answer the question.

A. We consider their character, their ability, their—what-you-call-them——

Q. What I am getting at, Mr. Pombo, is how did you determine that the men who are on the jury were better than these men whose names I have read to you and have gone over—without your investigating these men or calling them in or doing anything further with respect to them?

(Testimony of Augustine Pombo.)

A. Well, just as I say, you see the Grand Jury, you questioning them. They must be good men for you to [317] question them. You are afraid of them.

Q. That is not the question, Mr. Pombo. The question is how did you determine that the men on the jury are better than men whose names I have read to you—without your investigating any further the men whose names I have read to you other than looking at these questionnaires? What standard did you use?

A. Well, we picked men—majority of them with better education. They are in business in the community.

Q. Yes. Was it your feeling that a man in business would be better qualified than a man out of business?

A. He has got a better head on him.

Q. Is that the conclusion you arrived at?

A. If I can pick a business man, got a business of his own, and good moral character, I would just as soon pick him than pick some juror I don't know anything about other than what you see on paper.

Q. You would rather pick a person who is a business man, whom you know personally, who has a good head, as against a man who appears to be a working man, as on these questionnaires appear, without knowing anything more about them?

A. Also not only a business man, a fellow that is working for a business house—let's say, a good clerk or a good bookkeeper. He would be a whole [318]

(Testimony of Augustine Pombo.)

lot better than some other fellow—just an ordinary truck driver.

Q. Or a man who works in the fields or things of that character.

A. Well, I wouldn't say fields—they got some smart fellows in the fields too.

Q. Well, in the mills or canneries or wherever it is they might work. Is that what you are saying?

A. Not exactly with the mills. Anybody can be a truck driver.

Q. The question I am getting at is this—are you telling me——

A. No, we give the fellow in the field just as much consideration as the business man.

Q. Are you telling me, Mr. Pombo, that in selecting the jury, you selected those who were in business rather than those who worked with their hands because you thought that the man who was in business was better qualified than the others?

A. No, I say that the man in business, the man who works for the business man too.

Q. Yes.

A. The clerk, bookkeeper—he is usually more qualified to be a juryman than the guy that gets out and works with a hoe.

The Court: Did you have a certain percentage ratio that you applied to these respective precincts?

Witness: Yes, we have. We can only pick so many. We can't pick more than the required number.

(Testimony of Augustine Pombo.)

Mr. Resner: Well, the percentage is based on the population of the precinct, isn't it?

Witness: Yes.

Q. Now, according to the papers, Mr. Pombo, which are in the front of this file which indicates the qualified jurors, the questionable and the non-qualified—those that are listed under qualified are admittedly qualified to be on the jury, is that right?

A. Yes.

Q. And I see that of the names I have read to you, you and your fellow commissioners agreed that Mr. Barona, that Mr. Estrella and Mr. Segundo were all qualified. A. Yes.

Q. Now, next you have a list which is questionable. What does the caption, "Questionable" mean?

A. Well, their questionnaires did not look as good as this questionnaires with these people.

Q. But where it appeared questionable, did it mean that the probability was that they could qualify for jury service after you brought them in and talked to them and were satisfied that they were qualified. Is that it?

A. Yes, they could qualify. Usually when we run out [320] of jurymen—like picking the trial jury, we usually pick men for that particular precinct, and sometimes we run out of fellows and we pick them from the next list.

Q. And on that list, I see you have Gumba Ortello. No—not him, excuse me. You have Mr. Vincente—wait a minute now—I will check in a

(Testimony of Augustine Pombo.)

minute, because he doesn't appear anywhere. Mr. Segundo, that's right, isn't it? A. Yes.

Q. And Mr. Sena—that's right, isn't it?

A. Yes.

Q. And of the "Not Qualified," you list Mr. Joseph Ortello and Patrick Ortello. A. Yes.

Q. I will find out about Mr. Vincente.

Mr. Crockett: If the Court please, might I ask that Counsel have the list he just referred to as qualified, non-qualified and questionable more definitely identified so that the record will show just what he was referring to?

The Court: Mr. Resner, there has been a question of identifying for the purposes of the record what you are using.

Mr. Resner: I am using a file that states, "19th Precinct, Haiku," and it has no other caption on it, but I think a fair description would be—the [321] juror questionnaires filled out and returned for that 19th Precinct of Haiku.

The Court: And as I understand it, you are using the fly leaf pages of the file which Judge Wirtz, as a witness, indicated when he was on the stand as being a gathering together of the names on the questionnaires included in the file which, after consideration by the Commissioners, were listed up in respective categories for further use.

Mr. Resner: That appears to be the description.

The Court: The first page is a list of those in the precinct showing unqualifiedly the qualifications which they were seeking.

(Testimony of Augustine Pombo.)

Mr. Resner: In the Jury Commissioners' opinion.

The Court: And the second page of the list is a list of names which they had considered and which they entitled, "Questionable," for further search. And then there is another segregation. What are those entitled?

Mr. Resner: Another group called, "Exempted." Another group called, "Not Qualified"; and "Out of Jurisdiction."

The Court: That is similarly on all the questionnaire files that were used by Judge Wirtz when he was on the stand?

Mr. Resner: So it appears. The name of the other one who was qualified was—oh, questionable. Here it is, Mr. Pombo—Engoring Vincente—he was the other one that you mentioned as questionable.

A. Yes.

Q. Now, the two that you disqualified were the two Ortellos. I see that Mr. Patrick Ortello here says he went through the 8th grade in the Hana School, was employed by the Kahului Railroad Company—can you tell me why he was disqualified?

(Witness mumbling.)

Q. You want to know where Ortello is?

A. Yes.

Q. The preceding pages.

A. I don't know why we put him on the—I don't know why we did.

Q. You didn't call him in?

A. No, we didn't

(Testimony of Augustine Pombo.)

Q. And it appears that Patrick Ortello was born on October 2nd, 1924, at Ulumalu, Haiku, Maui, and went through the Hana School in the 8th grade—Patrick Ortello, Filipino in origin.

A. Unless the other Commissioners went out and see for themselves and decided that the man was not as good and notified the other Commissioners that this man was not as good as the others.

Q. And the other was Joseph Gumba Ortello—born September 13th, 1922 at Ulumalu, Haiku, also Filipino in origin; employed by the Kahului Railroad [323] Company and went to the Halehaku School through the third grade.

A. I don't know whether the other commissioners contacted him personally—Mr. Chatterton.

Q. By and large, didn't you agree among yourselves with your fellow Commissioners, Mr. Pombo, that the 8th grade was sufficient education?

A. Oh, yes.

Q. And there are jurors on the list who have only an 8th grade education?

A. Yes, there are.

Q. And there are some who have less?

A. Some with jury experience.

Q. With less than an 8th grade education?

A. Yes.

Q. As a matter of fact, most of the grand jurors apparently on an educational basis were college people, is that right?

A. Well, I am pretty sure that most of them have had some high school anyway.

(Testimony of Augustine Pombo.)

Q. If you went through the list, you would find most of them had a college education. You wouldn't disagree with that, would you?

A. I wouldn't disagree with you.

Q. Again, in the same file, Mr. Pombo, here is Mr. Vincente Engoring whom you have put down on the list as questionable. I see he has a 9th grade education. Do you know why he would be questionable rather than [324] Qualified?

A. I don't know why we put him on the list. The other Commissioner may have had something to do with it.

The Court: You might shorten your investigation, Mr. Resner, by directing your attention again to the statute, referring to Section 9800, that "All of such selections shall be citizens whom the respective commissions believe, after careful investigation in each case, to be qualified and not exempt——"

Mr. Resner: Well, I agree—careful investigation. I am trying to find out what careful investigation was made. I hardly think it is an investigation if a man's questionnaire is looked at and nothing further done.

The Court: You are dealing with a list that is, so-called, questionable. That doesn't mean to the Court that a decision has been made, but simply set aside until a further careful investigation can be made. And I think we are wasting time on the evidence that has been heretofore given—that is obvious.

(Testimony of Augustine Pombo.)

Mr. Resner: I should like the privilege of proceeding, your Honor. Mr. Seno finished the 9th grade. You will see his handwriting seems to be fairly good, doesn't it, Mr. Pombo? He is a carpenter; went to Haiku School and Maui High School.

Witness: I was just comparing the handwriting.

Q. Yes. Why is he on the questionable list rather than on the qualified list?

A. Maybe the other Jury Commissioner had something to do with it.

Q. You don't know the reason yourself?

A. I don't remember.

Q. And here is Mr. Segundo, who is a laborer with Libby, McNeill & Libby; went through the 8th grade. Do you know why he is on the questionable list rather than the qualified list?

A. No, I don't know.

Q. You know of no reason to mark him as questionable?

A. No, the other Commissioners may have had something to do with it.

Q. Here is the file of questionnaires from the 1st precinct, Lanai City. There are, as I recall it, a great many Filipino laborers on Lanai in the fields and canneries. Isn't that so, Mr. Pombo?

A. Yes, I think that is so.

Q. I think there may be close to 1,500 or 2,000.

The Court: Mr. Resner, I don't know that that is material to any consideration before the Court.

(Testimony of Augustine Pombo.)

The requirement again in the statute is that it be a list representative of the qualified citizenry of each circuit, and according to your questions to the witness there are 13 persons who come forward as citizens on the qualified list, or something of that nature.

Mr. Resner: Where? In Lanai? [326]

The Court: Something of that on Lanai, so that your question of 1,500 laborers begs the question that is before the Court.

Mr. Resner: On Lanai, if your Honor please, there are 18 males, out of a total of 336 qualified citizens. There are nine Filipino women there.

The Court: The Court at this time has announced that it is not concerned with women in view of the fact that Congress has not seen fit to make that a consideration. The record is prohibited to you by the Court's refusal to discuss the question of women, and I don't want any further questions along that line. You may have your exception to it. I am relying on the decision of the very case cited by Counsel—the Ballard case.

Mr. Resner: I take exception.

The Court: And your exception may run as a bar to any further question involving women citizenry on the grand or trial jury.

Mr. Resner: I make the point, but the exception is preserved for the record as a whole?

The Court: That should be clear to you that I am barring any further examination on the ques-

(Testimony of Augustine Pombo.)

tion of women in view of the fact that in the Ballard case it distinctly says that this question is a matter for the local jurisdiction, and Congress has taken a hand in this local jurisdiction. [327]

Mr. Resner: Yes, I am merely taking my exception, your Honor.

The Court: You have had your exception. Now enough of this. Let's pass on from that woman question.

Mr. Resner: Mr. Pombo, I see here in the first precinct at Lanai the name of John Cornelio.

Mr. Crockett: If the Court please, may I interpose an objection here. I submit, if the Court please, it serves no useful purpose and it is not material for the record for Counsel to go on and pick out each individual name of a person who is Filipino, and there is nothing in the record at the present time showing there was any discrimination against these people by virtue of being Filipino. I didn't make the objection in respect to the other precincts, but if he is going through the whole list of the County of Maui and get simply the same thing, I submit, if the Court please, it is certainly a waste of time and crowding the record with a lot of material that has no bearing.

The Court: The Court will allow Counsel to proceed for the purpose of illustrating his point with this additional precinct.

Mr. Resner: Now, John Cornelio's home is Lanai City, Lanai; born at Kohala, Hawaii—Nuilii,

(Testimony of Augustine Pombo.)

Kohala, Hawaii; whose parents are given as Filipino; [328] who is single; 27 years old; who is an assistant gang luna at the Hawaiian Pineapple Company; who has been a tractor operator; and who attended the Makapala School at Hawaii; finished the 8th grade; returned his questionnaire on September 27th, 1946.

Witness: Oh, we must have gone through him.

Q. Now, I see that you have marked him as a qualified prospective juror. A. Yes.

Q. Did you consider him any further?

A. Well, Lanai was only one man that we picked for the Grand Jury.

Q. The question is whether or not you considered him. A. We must have considered him.

Q. Do you have any distinct recollection of considering him?

A. We must have; we got one man.

Q. Do you have any recollection of considering him? A. We must have.

The Court: Doesn't it show on your list, Mr. Resner, that they put him on the qualified list?

Mr. Resner: Well, what I am trying to find out is how far the investigation went—what discussion occurred after that. Now here is a man who gives his name as Douglas Marcelino Laboya—

Witness: I think it might be a "G"—Gaboya.

Mr. Resner: It might be—whose address is Lanai City; born on August 8th, 1920, at— [329]

A. Looks like Kahului, Oahu.

(Testimony of Augustine Pombo.)

Q. It does—who has been 26 years in the Territory; truck driver; employed by the Hawaiian Pineapple Company; who went to the Waianae School; finished the 8th grade. I see he appears on the questionable list—Gaboya. Here we have Mr. Carl Larato—and the last name is Herolaga; whose home address is Lanai City; who was born in Hilo, Hawaii, on December 9th, 1918; who is married; of Filipino origin; who is a truck driver at Hawaiian Pine; who finished the Waianae School through the 8th grade—and he appears on your so-called qualified list. A. Yes.

Q. Next is Ted Simplicio—last name is Herolaga, whose address is Post Office Box 13, Lanai; born December 4th, 1920 at Hilo, Hawaii; whose parentage is Filipino; truck driver with Hawaiian Pine; who went to the Waianae School through the 9th grade. A. That's right.

Q. Returned questionnaire on September 27th, 1946.

A. He says, "Not enough education."

Q. He says, "Not enough education," but he went through the 9th grade. Would you take a man's statement——

A. Where did we put him?

Q. You put him on the questionable list. We have George Ramaila; residence, Lanai City; born, Maui, August 8th, 1915; married; 31 years old; three children; [330] of Filipino parentage; a truck driver at Hawaiian Pine; went to Hilo High School Shop, through the 8th grade——

(Testimony of Augustine Pombo.)

A. What is his name again?

Q. Ramaila. He appears on the questionable list. Do you know why he appears on the questionable list?

A. He claimed disqualification and scratched "Yes" out and puts "No."

Q. He went through the 8th grade.

A. Yes.

Q. Writes well.

A. We must have had reason for putting him there—I forgot—no idea what the reason was.

Q. You have Vincente Compania—and the last name, Saloricman; resident, Lanai City, Lanai; born, Lahaina, Maui, July 19th, 1924; married; one child; Filipino parentage; a stevedore for Hawaiian Pine and he had been in Hawaiian Pine as a brakeman in the Kahului Railroad Company; and he was in the army; he went to the 8th grade; and he says he has no education—and he is disqualified because he has no high school education and no experience. You don't consider that a disqualification, do you?

A. If he disqualifies himself, we usually do disqualify.

Q. On educational grounds?

A. No, if he disqualifies—if he wants to be disqualified, why—

Q. Who makes the standards of education—the juror [331] or the Commissioners?

A. The Commissioners.

(Testimony of Augustine Pombo.)

Q. You put him on the questionable list. Here is Frederick—middle name, Bibilone—last name, Saranillio; Post Office Box No. 858, Lanai; born, April 8, 1924 in Mt. View, Hawaii.

A. Mountain View.

Q. Mountain View, Hawaii; nationality of parents is Filipino; he is a stevedore; he had been a truck driver; in the army; he had gone to the Mountain View School in Hawaii through the 8th grade; and he says, "Not enough schooling"; and he says he is not disqualified for jury service. Right?

A. That is what he says.

Q. And I see he appears on the questionable list.

A. Questionable.

Q. In regard to these persons, you didn't do anything further than look at the questionnaires and it is also true you didn't call them in?

A. We didn't call them in.

Q. Did you make any other investigation?

A. There is no appropriation for that. The government has no appropriation to send for them.

Q. The question is whether or not you did it or not—not whether or not there is an appropriation.

A. We couldn't send for them—not when you don't have no money to pay for the transportation.

The Court: Can Counsel give for the matter of the record how many questionnaires he found in this Lanai City file of the character that he is questioning about?

Mr. Resner: You mean——

(Testimony of Augustine Pombo.)

The Court: The ones that you were last questioning the witness about.

Mr. Resner: How many there were altogether?

The Court: How many questionnaires returned?

Mr. Resner: Altogether, quite a large file.

The Court: No, I mean of the ones that you found for——

Mr. Resner: Filipinos?

The Court: Yes.

Mr. Resner: We will offer certified copies of the ones that we have used.

The Court: What I want to know for the record at this time, so that anyone can pick it up in a rough way for further check, how many——

Mr. Resner: I am counting. There are seven that I have gone over in the 1st precinct of Lanai City, and that isn't all. I haven't gone through the whole file, Judge—haven't had a chance—and ten in the 19th precinct at Haiku.

The Court: I think we had better take a recess at this time.

(Second Circuit Court recessed at 10:02 a.m.

Reconvened at 10:13, a.m.)

Mr. Resner: For the record here, Mr. Pombo, I want to show you what Defendants' Exhibit 11 in evidence shows. This is the Census for Hawaii in 1940, showing Maui, among other things. And here we see that at that time there were employed in Maui of male workers on all work except public emergency work, 17,657. My finger is at it.

(Testimony of Augustine Pombo.)

Witness: Yes.

Q. And going down the column, we see that of the persons described as farm laborers, wage workers and farm foremen, 8,638 of that total number of employed are in the class of farm workers and foremen.

The Court: Does that indicate that they are citizens?

Mr. Resner: Is that necessary, your Honor?

The Court: That is what the statute requires for qualified jury consideration.

Mr. Resner: If your Honor please, I should like to examine the witness without interruptions.

The Court: I am asking the question so that it may become pertinent to the figures in the record. I am asking you a courteous question, Mr. Resner. Does the figure you read divide as between citizens and non-citizens?

Mr. Resner: No, it is the total labor force. [334]

The Court: I want the record to so show.

Mr. Resner: I don't think there is any question about the record showing that it exists in some evidence.

The Court: It doesn't show from the figures you are reading from unless it specifically appears.

Mr. Resner: It is in the records from yesterday.

Let me show you this, Mr. Pombo, so it appears that approximately half of the labor force is farm labor of Maui County—those employed.

Witness: 8,000?

(Testimony of Augustine Pombo.)

Q. More than 8,000 out of a little more than 17,000.

A. Of farm labor—you mean the plantations?

Q. Farm laborers.

A. They include cane workers as farmers?

Q. Everybody who works on the farm.

A. I don't call it farms. We are not used to it. We just saw an agriculturist here this morning—in Hawaii, they have never called a sugar plantation a farm.

Q. These are the descriptive terms used by the United States Census.

A. I know. That is the reason I can't get used to hearing it called a farm.

Q. I want to turn for a moment to show you this, too—that in Maui County, according to the 1940 Census, you had a population of 55,950, of whom 32,198 were men. [335]

A. How many of that are citizens?

Q. I am just going over the list, Mr. Pombo—population. The citizens appear in another exhibit. And it appears that of the men at that time, 8,198 were Filipinos.

The Court: Citizens or non-citizens?

Mr. Resner: If your Honor please, I think it is rather clear that what we are giving now is the population as given by the Census.

The Court: Without description as to citizens?

Mr. Resner: Yes. I still think under the Constitution, your Honor, that a person, whether he be citizen or non-citizen, is entitled to equal protection of the laws.

(Testimony of Augustine Pombo.)

And, Mr. Pombo, there are 23,782 females in the population, of whom 2,321 are Filipinos. And all along that line you see the breakdown according to race. In other words, Filipinos constitute the second largest population group in Maui. The largest group is Japanese, of whom there are 12,940 men. Of the——

Witness: That includes alien citizens?

Q. Everybody, Mr. Pombo. And of Hawaiians, there are 1,586 males; of part Hawaiians, there are 3,993 males; caucasians—that includes Portuguese—there are 3,518; of Chinese, there are 809; and all others, there are 1,088—a total of 32,198 men at that time. Now, in selecting this grand jury, Mr. Pombo, were you seeking to get a cross section of the community? [336]

A. What do you mean by “cross section”?

Q. Do you not understand the term?

A. I am not sure.

Q. Well, the Supreme Court said in one of the cases, Mr. Pombo, that in selecting the jury, “Recognition must be given to the fact that those eligible for jury service are to be found in every stratum of society. Jury competence is an individual rather than a group matter. That fact lies at the very heart of the jury system. The American tradition of trial by jury, considered in connection with either criminal or civil proceedings, contemplates an impartial jury, drawn from a cross section of the community.”

(Testimony of Augustine Pombo.)

Mr. Crockett: If the Court please, may I ask that Counsel also read the definition given by the Supreme Court in the Thiel case where the Supreme Court also said that a cross section of the community does not mean that each individual social class is included in a cross section, as that term is used by the Supreme Court of the United States.

The Court: In other words, that all particular possible classifications are not necessarily included if it is fairly representative.

Mr. Crockett: That is correct.

Mr. Resner: Now, a cross section, Mr. Pombo, would mean that without intentional exclusion of any particular class or group, that all groups in the community from every walk of life and from every racial group, every religious group and things of that character that the jury is selected from, so that the jury truly reflects the community as a whole. Now, what I am asking you is whether you have selected the jury with that in mind?

Witness: Yes, we have.

Q. Would you say that the jury which excludes from it completely Filipino citizens is representative of the community as a whole?

Mr. Crockett: If the Court please, I ask that that question—I object to the question because it does not refer to the Filipino citizens who are qualified for jury duty.

Mr. Resner: I will put that in.

The Court: I think that Counsel is calling for

(Testimony of Augustine Pombo.)

a legal conclusion in asking this witness to be a substitute on the Bench on the evidence included. That is my job, Mr. Resner, to come to that conclusion as a legal conclusion—and not the witness' speculation. You are at liberty to examine the Jury Commissioner as to any factor of arbitrary action on his part or non-arbitrary action on his part to bring out the facts, and it is up to me to draw the conclusion.

Mr. Resner: I am asking Mr. Pombo—and I think the question was asked by Mr. Crockett of Judge Wirtz yesterday, and allowed—as to whether or not a jury of this character which has on it no Filipinos and on which there has never been a Filipino, is in his judgment in that regard a cross section of the community.

The Court: I am addressing myself to this one question without bringing in or attempting to bring in faulty memory as to other factors of other witnesses. My ruling is on the question you are now putting to this witness.

Mr. Resner: May the witness be allowed to answer the question?

The Court: The objection is sustained.

Mr. Resner: We will take exception.

The Court: The exception is allowed.

Mr. Resner: Now, Mr. Pombo, would you say that a Grand Jury as this one which has on it some 56% haole, as the term is employed in the Territory——

(Testimony of Augustine Pombo.)

Witness: You are wrong—only 17.

Mr. Resner: I am talking about percentage, Mr. Pombo, on the evidence we have submitted. And if our evidence is wrong, we will be corrected in the courts. But I am asking you the question—I am including Portuguese among the—I will rephrase the question and put it this way. Would you say that a Grand Jury which has on it 56% of caucasian is a fair cross section of the community of Maui?

A. In selecting the jury, I didn't consider Portuguese or Hawaiian or haole or—didn't make any difference to me who he was, and the jury that we got—I consider that a good jury.

Q. The question, Mr. Pombo—

A. That represents the entire Island.

Q. That is a cross section of the Island?

A. That should be.

Q. What do you mean by "That should be"?

A. You only allowed to pick a very few men, very few in Grand Jury. One in Lanai from a great big part that you get there—so whatever we picked, we picked them from every precinct, and nearly every precinct, we picking them from all around—and I consider that a good selection.

Q. In other words, 56% of caucasian, you say, is a fair cross section of the community?

A. No, I don't consider a Portuguese a white man. They consider us as niggers here. We are not classed as white men. They don't even class us as caucasians themselves and I told you that yesterday,

(Testimony of Augustine Pombo.)

and I would like to have that included—that Portuguese are not called caucasian.

Q. Don't you consider yourself——

A. I might, but I was taught when a boy that I am not a caucasian. I was a Portuguese and I am going to stick to it and I am proud of it.

Q. Don't you consider yourself, as an anthropological matter, a caucasian? And when I use that term, I mean [340] according to the scientific definition of what are the races of mankind.

Mr. Crockett: We object to the question, if the Court please. After all, this is direct examination by Counsel, and he is not entitled to cross-examine the witness in going into an anthropological question which I submit is entirely extraneous to the record in this whole matter.

The Court: I think we have gone far enough on that. The objection is sustained.

Mr. Resner: I take exception.

The Court: Exception allowed.

Mr. Resner: Now, Mr. Pombo, would you say that a Grand Jury such as this one is, composed of approximately 89% of men in the managerial or owner or clerical class as against a little bit more than 10% who are in the so-called workers' group—would you consider that kind of a Grand Jury a true cross section of and representative of the community?

Mr. Crockett: We object to the question, if the Court please. Again it is calling for the conclusion

(Testimony of Augustine Pombo.)

of the witness; and it doesn't include in it, that happens to be included, and that is the relative educational qualifications of the different people in the different classes.

The Court: The Court will put the sustaining of the objection on the ground that the witness is being asked to usurp the prerogative of the Court in this particular proceeding.

Mr. Resner: I will take exception.

The Court: Exception allowed.

Mr. Resner: How do you explain the fact, Mr. Pombo, that there is not a single farm laborer on the Grand Jury list of 50, and there are some 8,000 farm laborers in Maui?

Witness: Not including—you are including the aliens?

Q. Aliens and citizens.

A. Why don't you stick to citizens so it would be more specific?

Q. There are a substantial number of citizens among the 8,000 farm laborers, Mr. Pombo. There are more citizens among the farm laborers than there are citizens among the so-called management group. How do you explain the fact that there is not a single farm laborer on the Grand Jury list of 50?

A. We don't consider them as farm laborers. We just go through them and pick them out and go into their questionnaires or personally, and if they satisfy the Commissioners that they will make

(Testimony of Augustine Pombo.)

good jurors, we put them on regardless of what their occupation is.

Q. You select the Grand Jury list independently of what the occupations of the jurors are, is that correct? [342]

A. What did you say?

Q. You select the Grand Jury list without regard then to what the occupations of the jurors are?

A. Yes. We don't consider the occupation.

Q. You don't consider the occupation?

A. Well, we don't take that into much consideration.

Q. I see. You select the jury on another basis?

A. On another basis—on their merits.

Q. You select them on the basis, really, of what you call intelligence?

A. Yes.

Q. Good character?

A. Yes.

Q. Education?

A. Yes.

Q. Those are the standards?

A. Yes.

Q. Not so far as race is concerned?

A. That doesn't count with me.

Q. Or business is concerned? Or occupations are concerned? You ignore that in selecting a jury?

A. No, business men and clerk and stuff—I prefer to get them. They make—they really smarter jurors.

Q. I see. And so in selecting the jury, you take into account whether a man is a business man?

A. Not exactly a business man—a fellow can be working for a business man and still may be smarter than his boss. [343]

(Testimony of Augustine Pombo.)

Q. You say that a man who is in a high clerical position——

A. Our business here all small—very few big ones—the plantations.

Q. I understand that, but what you are saying is that when a man is working with a business or has some kind of executive job, that to you that means he is better qualified.

A. He usually does.

Q. Than a man who works with his hands?

A. He usually is better qualified.

Q. That's right. That is what you are saying.

A. That is what I am saying.

Q. Then as I understand you, you take into account that qualification in selecting a juror; but if a man is a worker, then you don't consider that.

A. Oh, no, you are wrong.

Q. I beg your pardon? Isn't that what you said? Don't you pick——

A. What do you mean by worker?

Q. Somebody who works on the plantations or canneries.

A. I have a lot of plantation men on the jury now.

Q. I am talking about the wage earner, the wage worker, the daily wage worker. You know what that is? A. I guess I do.

Q. The man who works by the hour.

A. Lots of them work by the hour. [344]

Q. You know what I mean by wage worker?

(Testimony of Augustine Pombo.)

A. Yes, I know. The per diem worker that gets paid by the hour.

Q. Somebody who works in the cannery or sugar plantations or canneries, pineapple fields—that is what we mean by wage earner.

A. We considered the men in the canneries.

Q. What I am getting at is in picking this jury, was it important to you whether or not the jurors had that kind of job? You disregarded that?

A. Doesn't make any difference to me what kind of job he has.

Q. Did you disregard or take into account a man's job in putting him on the jury?

A. I prefer to have experience on the Grand Jury. I would like to have a clerk—somebody that is familiar with paper work.

Q. Yes.

A. Somebody that has got—usually got a good education to be in an office.

Q. Yes.

A. He makes a better juror than the man that is not doing any office work.

Q. And what caused you to come to that conclusion?

A. My experience as a juror myself, sitting on the jury.

Q. In other words, you think business people make better jurors than ordinary laborers? [345]

A. Yes, I do.

Q. And so in selecting a jury, you kept in mind

(Testimony of Augustine Pombo.)

that standard rather than the standard of getting people from all kinds of trades and occupations?

A. We have them from all kinds of trades and occupations now.

Q. The question is this—in selecting this jury, what you particularly kept in mind was getting on the jury business people, managers or clerical people or supervisory people. You favored those on the jury.

A. We have all kinds of men on the jury.

Q. Rather than those who worked in the fields and canneries.

Mr. Crockett: Just a moment. If the Court please, I object to the question. It has already been asked and answered. Mr. Pombo has stated repeatedly that they did not make a man's occupation the controlling factor in making their selection, and it has been answered dozens of times here, and Counsel goes over the same question over and over again.

Mr. Resner: I don't think so. May I finish the question?

The Court: The objection is sustained, and also the Court adds because Counsel is with clever questions putting words into the witness' mouth that the witness is obviously himself incapable of putting in that form, and therefore makes a leading question for [346] the purpose of making a point in Counsel's own favor—and he is Counsel's witness.

Mr. Resner: If your Honor please, I most respectfully except to the Court's statement and indi-

(Testimony of Augustine Pombo.)

cate to the Court that it shows on the part of the Court a bias and prejudice against these defendants and an unfairness in these proceedings.

The Court: I am addressing myself to the conduct of Counsel. As far as I am concerned, the defendants are innocent at this stage of the proceeding before me. I am addressing myself to the cleverness of Counsel.

Mr. Resner: I don't think the comment was necessary, if the Court please and I take exception.

The Court: I want your exception in the record, alongside of my comment on your question.

Mr. Resner: I think it rather remarkable that in a County where there are 8,000 farm laborers, there is not one on the jury list.

The Court: I have ruled, Mr. Resner, and please—no more remarks in connection therewith after ruling. Note your exception and proceed.

Mr. Resner: I do require and I think we are entitled to a fair hearing.

The Court: You are getting it.

Mr. Resner: I doubt it.

You have used, year after year, Mr. Pombo, a number of jurors on the Grand Jury list. [347]

Witness: Yes, we have.

Q. Consecutive terms.

A. Yes, we have.

Q. And why has that been done?

A. The law permitted us to use these jurors that were selected on the panel but don't serve.

(Testimony of Augustine Pombo.)

These men that don't serve, we continued on—continued them on for the next year's panel.

Q. I see. Did you consider them qualified because of prior experience?

A. What do you mean? The men who were on the list?

Q. The men that you continued on service year after year.

A. It saved us a lot of work—already selected, already considered—and we just carry them on in the next term.

Q. It made it easier that way, is that it?

A. The law allowed us to do that.

Q. And it made the Commissioners' work easier in that regard to get a jury? A. Sure it did.

Mr. Resner: That completes the examination of Mr. Pombo at this point.

Mr. Crockett: If the Court please, at this time may the record show that the list of questionnaires which were referred to in the examination of this witness by Counsel, and particularly the tabulation of the returns of those questionnaires as [348] were referred to and identified by Judge Wirtz when he was a witness on the stand—that it appears that of the questionnaires examined, 50 persons were included on the qualified list and 59 on the questionable list. There are listed as exempt, 30 persons; and listed as not qualified, 49 persons; and out of the jurisdiction, eight persons; and in the army, three persons; deceased, one; and no questionnaires

(Testimony of Augustine Pombo.)

returned, 13. Might I amend my offer to say that it refers to the 19th precinct instead of the 1st.

The Court: 19th precinct located where?

Mr. Crockett: Haiku. And that in order that it might be in the same portion of our transcript, that the records of the court further show that the grand jurors listed by the Commissioners from the 19th precinct were Walter Holt and Edwin K. Muroki.

And may the record further show that from the questionnaires of the 1st precinct, located at Lanai City, the tabulation of the questionnaires returned show that 94 persons were placed on the qualified list; 87 were on the questionable list; exempt, 60; out of the jurisdiction, 48; in the army, 9;—the heading is “Temporarily Out of the Jurisdiction”—9; deceased, two; and questionnaires not received, 20. And that the records heretofore introduced in evidence show [349] that the Commissioners listed as grand jurors from the 1st precinct, Lanai, David P. Eldredge and Toshio Onuma.

We have no questions from this witness.

(Witness excused.)

Mr. Resner: Will you call Mr. Chatterton, then.

CLAUDE E. CHATTERTON

having been first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Resner:

Deputy Clerk: Please state your full name.

Witness: Claude E. Chatterton.

Mr. Resner: Would you state your full name, please?

Witness: Claude Ellsworth Chatterton.

Q. And your address, Mr. Chatterton?

A. I live in Kula. My Post Office Box is 145, Kahului.

Q. And your business?

A. I am assistant manager of Kahului Store.

Q. Who is the owner of that store, Mr. Chatterton?

A. The Hawaiian Commercial and Sugar Company.

Q. What is your political registration by party?

A. Does that—is that a question that has any bearing? [350]

Q. Yes, it is. A. I am a republican.

Q. The statute requires that one of the Jury Commissioners be a republican and the other a democrat? A. I agree with that.

Q. I wanted to see whether there were two democrats on the Commission. Now, Mr. Chatterton, how long have you been a Jury Commissioner?

A. Since I received my first appointment from Judge Wirtz in 1945.

(Testimony of Claude E. Chatterton.)

Q. So you have served two terms?

A. I have served two terms?

Q. And this is the third term?

A. The third term is coming up. We have picked two jury lists.

Q. You participated in the work that resulted in the selection of the 1947 Grand Jury list?

A. I did.

Q. Out of which the array of 21, or, 23 names was chosen?

A. You mean the 23 jurors chosen from the list?

Q. It is called the array, as gathered here, or the active Grand Jury.

A. That's right.

Q. That does the work. Now, as I understand it, you selected 50 names on the list. [351]

A. Yes.

Q. You met from time to time, did you, in 1946 to select the names?

A. That's right.

Q. Now, are you familiar with what the statute says with regard to the qualifications of jurors?

A. I am.

Q. One of those is that a person be intelligent. What do you understand that to mean?

A. That is a very obvious question. You can tell whether a man is intelligent or not, and one of the reasons is by the work that he does.

Q. I wonder if you would explain that a bit more, Mr. Chatterton.

A. I don't consider it needs any further explanation.

(Testimony of Claude E. Chatterton.)

Q. Well, when you say that you determine a man's intelligence by the work that he does——

A. That is one of the reasons, yes.

Q. What does that mean to you?

A. It means that he has average intelligence and that he has not necessarily gone through any particular grade in school. He might not have gone to grammar school; he might have had an education at home.

Q. Do you associate intelligence with certain kinds of work more than with other kinds of work?

A. Not necessarily.

Q. I am still at a loss to understand what you mean by intelligence as determined by the kind of work a man does. Can you enlarge upon that?

A. Whether he has a trusted position with the firm that he is employed by.

Q. Yes.

A. Or—there are different positions which require different amount of intelligence.

Q. I see. Well, is it your thought that if a person holds an executive position or a supervisory position, let's say, in business of some kind, that chances are that that man would be more intelligent than someone who works by the hour, let's say?

A. Perhaps so. Perhaps not. Not necessarily—not all jobs are held on merit, Mr. Resner.

Q. Yes, I understand that, too. But what I am getting at is what kind of work it is that you associate intelligence with.

A. Any job.

(Testimony of Claude E. Chatterton.)

Q. Do you think that a person is likely to be as intelligent if he is a farm laborer as if he holds the position of manager of a railroad with respect to jury service? A. Could possibly be. [353]

Q. Well, in your opinion where do you think the probabilities lay? A. I couldn't say.

Q. What standard did you use then in fixing intelligence in selecting the jury list of 50?

A. Used whether they—personal knowledge of the persons to whom the application was sent—from long experience on the Island. Mr. Pombo stated he has been here—born and raised here. I haven't been born and raised here, but been here 30 years and know more or less the entire community with the exception of outlying districts. Those were the districts we put the first questionnaires out to.

Q. Would you say that other things being equal that you selected the jurors from amongst the people that you knew personally? A. No, sir.

Q. Did that have anything to do with the selection—whether you had personal knowledge?

A. Not to my mind, it did not.

Q. If you knew one man personally and not another, would you select the man you knew personally?

A. Perhaps we might—I can't answer that yes or no.

Q. Well, now, could you go over the list of 50 and tell us those whom you know personally?

A. Yes, I can.

(Testimony of Claude E. Chatterton.)

Q. I hand you the Court's exhibit, a certified list. This is the Court's list. It is in evidence here, [354] Mr. Chatterton. You see the first name is Mr. Eldredge. Do you know him? A. I know him.

Q. How long have you known Mr. Eldredge?

A. I have known him probably for 15 years—not personally, but I know the family. I know where he was born, where he has worked, but he is not a personal friend of mine.

Q. Was that a consideration in selecting him as a juror—your knowledge of him?

A. That and the work that he does and the reputation that he has in the community.

Q. What is the work that he does?

A. I believe he is personnel—assistant personnel director of Hawaiian Pine, and before that he was working in the personnel and athletic department of Pioneer Mill Company.

Q. And that indicated to you a qualification?

A. Not only that, but he has had past jury experience—jury service, which he performed very well.

Q. Next, is Mr. Toshio Onuma.

A. That person, I do not know.

Q. Next, Alfred S. Burns.

A. I know Mr. Burns.

Q. Have you known him long?

A. I have known him and have a speaking acquaintance with him for probably 15 or 20 years.

Q. And what caused you to put Mr. Burns on the list? A. I can't recall at present.

(Testimony of Claude E. Chatterton.)

Q. Did his work have anything to do with it?

A. No, sir.

Q. How did you determine that he was intelligent?

A. Well, for a matter of education, for one thing.

Q. Yes.

A. And the fact that he has the reputation in the community of being a reliable person.

Q. Mr. Correia—do you know him?

A. I didn't know Mr. Correia until I saw him yesterday morning.

Q. Mr. Roy Tatsumi Ito?

A. Same applies to him.

Q. Mr. Edward S. Bowmer?

A. I know Mr. Bowmer.

Q. How long have you known him?

A. I think—well, since he came to the Island of Maui. I don't know exactly how many years that is, but he was formerly with the Wailuku Sugar Company. Since he moved to Lahaina, I haven't had much contact.

Q. Now, he is cashier?

A. He holds an office at Baldwin Packers, I know that.

Q. On what basis did you put him on the list?

A. As I recall it, it was from standing in the community and past jury service.

Q. Mr. Burns is also employed as superintendent at Baldwin, isn't he? A. Yes.

(Testimony of Claude E. Chatterton.)

Q. How about Mr. Ralph Cornwell? Do you know him?

A. I just know him when I see him. I don't know him to speak to. [356]

Q. Mr. Yong Kam Chew?

A. I know Mr. Yong Kam Chew.

Q. How long have you known him?

A. For about 20 years.

Q. Do you know what he does?

A. He runs his own store in Lahaina.

Q. What caused you to put him on the list?

A. Most precincts we endeavor to scatter the—our choices for—by trying to get Chinese. If there happened to be four, we would try to take one Japanese, one Chinese, one Portuguese and one—what you might call haole.

Q. In other words, you tried to divide it according to race?

A. Not in all cases, but we try to make a fair distribution.

Q. How do you account for the fact that there are no Filipinos on this list?

A. Well, in a lot of cases the number of Filipinos that you questioned Mr. Pombo about, Mr. Resner—there is a number of Filipinos who have reached the voting age are still in the army—or service. They have had no chance to ever be picked on a jury except in this one particular term. There are a number of them, I know.

Q. I might point out to you at this time, Mr.

(Testimony of Claude E. Chatterton.)

Chatterton, that in 1946, according to Exhibit 17, the list of registered voters on November 5th, 1946

A. May I make the suggestion that the 1946——

Q. That there were 103 Filipinos registered to vote and you didn't complete your list until December 11th, 1946.

A. But, Mr. Resner, that 1946 tabulation was not released in time for us to use it. We picked the jury list from the 1944 list, as Mr. Pombo has already told you.

Q. Were there Filipinos registered in 1944?

A. There probably were.

Q. Do you know of any Filipino that has ever served on the Grand Jury in Maui County?

A. I am not familiar with the Grand Jury prior to 1945.

Q. In your experience, has there been a Filipino on the Grand Jury list?

A. Not in the two terms that I have served. I don't have the 1946 list with me, so I couldn't say. I don't believe there is a Filipino on the present Grand Jury list.

Q. Now, Mr. Ray M. Allen—do you know him?

A. I do.

Q. And he is the manager of the Wailuku Sugar Company? A. That's right.

Q. And how long have you known him?

A. I have known him for about 15 years, I imagine, or more.

(Testimony of Claude E. Chatterton.)

Q. Did your personal knowledge of him cause you to think he was a suitable juror? [358]

A. It did.

Q. Anything else that caused you to think he was a suitable juror?

A. One thing—that I believe every man should be a juror sometime or other. I will go with you on that, and I don't—to my knowledge, Mr. Allen has never been on during my term, and the fact that he was the manager of the plantation had no bearing whatsoever on that. But one thing I would point out to you, Mr. Resner, is that the top man managerial jobs have very rarely been picked on a jury.

Q. The second group?

A. Not the second, necessarily.

Q. Mainly? A. No.

Q. What group has been picked?

A. Been picked pretty well from all groups.

Q. Perhaps you can explain this to me—how did it happen that there is not a single farm laborer on this jury list?

A. I believe your statement is slightly wrong.

Q. Who are the farm laborers?

A. Well, there is one of the grand jurors who is present in the court room right now—Mr. Charlie Thompson, who is a rancher and a farmer and he does his own work.

Q. I am talking about—when I use that term, Mr. Chatterton, I am talking about a person who

(Testimony of Claude E. Chatterton.)

works [359] by the hour or by the day for some entrepreneurial as a farm laborer.

A. I see. I don't believe there are any. There are many on that list who are—work by the hour.

Q. I am talking about the people who work in the fields or in the canneries or in the sugar mills as day laborers. Do you know of any of those on the list?

A. Mau Hin is a machinist. He works in the mill.

Q. You don't consider a machinist—you don't consider a machinist as a farm laborer?

A. No, but he works in the mill. That is your statement.

Q. As a farm laborer?

A. No, farm laborers don't work in mills—nor do they work in canneries.

Q. What do you consider them on the list?

A. I consider them craftsmen, farmers, carpenters—whatever have you—they are tradesmen.

Q. Do you know Mr. Wai Ken Tom?

A. I do.

Q. What does he do?

A. I believe he is bookkeeper for the Maui Mutual Telephone Company.

Q. How long have you known him?

A. Practically the same years as the others—15 or 20 years—ever since he has been a small boy.

Q. And what caused you to put him on the list? [360]

(Testimony of Claude E. Chatterton.)

A. One of the main things is because I think he would make a good jurymen, better than average intelligence, had a good education, good reputation in the community.

Q. What about Mr. Ezell?

A. Mr. Ezell I know personally.

Q. How long have you known him?

A. First time I met Mr. Ezell was just a few days after Pearl Harbor when he was working for the USED, and he left the Island and returned here about a year ago.

Q. And what did you consider as a basis for putting him on the jury?

A. Same reasons—intelligence, standing in the community.

Q. Do you know Mr. Louis Sequeira?

A. I do.

Q. How long have you known him?

A. Twenty-five years.

Q. What caused you to put him on the list?

A. Because I believe he is a good man.

Q. I beg your pardon?

A. Because I believe he is a good man.

Q. What do you mean by the expression, "good," Mr. Chatterton?

A. Standing in the community, reputation among business men, business methods. I think that is sufficient. [361]

Q. Now, Mr. Sequeira is Portuguese by extraction?

A. Portuguese, yes.

(Testimony of Claude E. Chatterton.)

Q. And is he considered, in your judgment, as a caucasian or non-caucasian?

A. In my estimation, he is a caucasian.

Q. In the estimation of the community, is he considered caucasian or non-caucasian?

A. I couldn't say.

Q. Is there any reason why you could not say?

A. No.

Q. Mr. Winford W. Percy, do you know him?

A. I do.

Q. How long?

A. Well, I should say about five years.

Q. What does he do?

A. He manages the Maui Appliance Company—handles different appliances.

Q. What caused you to put him on the list?

A. Well, one thing is that I believe Mr. Percy is a very smart man, and, as I say, good business standing—and another thing is that in many cases lot of these people have more time to go on jury service.

Q. More time than whom?

A. Well, men who hold important jobs in many places where they cannot be let off. In many cases, tradesmen and craftsmen of different—

Q. In other words, people who can't get off?

A. Conditions here in the Territory are a little different than on the Mainland. We have our seasonal work here where with some men it is absolutely necessary that they stay on their jobs.

(Testimony of Claude E. Chatterton.)

Q. Who is included in that?

A. Mainly tradesmen and operatives in——

Q. People in executive positions?

A. Not necessarily.

Q. In connection with what you call seasonal work, who is more essential—those in executive positions or those who are people who work in the fields?

A. Well, I would say about fifty-fifty. Executives got to be there to direct the work, and operators of machines have to be there to operate the machines.

The Court: Mr. Resner, if there is no objection, we will take a recess.

(Second Circuit Court recessed at 11:00 a.m.
and reconvened at 11:10 a.m.)

Mr. Resner: Mr. Chatterton, do you know the juror, Nakamoto? No. 14?

Witness: I don't—I know him, yes.

Q. How long have you known him?

A. I have known who he is for a long time—probably ten or twelve years.

Q. What does he do?

A. I know him as a fisherman, but I think he has some connection with some market. [363]

Q. What caused you to put him on the list?

A. Well, he has a good standing in the community and is a qualified man.

Q. You mean qualified on the basis——?

A. Qualified juror—that is, a citizen and a voter.

(Testimony of Claude E. Chatterton.)

Q. Now, with regard to Mr. Maeda, do you know him? A. I do.

Q. How long have you known him?

A. About two or three years.

Q. His business?

A. I believe he is a public accountant.

Q. And what caused you to put him on the list?

A. The same reason as Nakamoto. He has a reputation of being a very smart boy—good standing in the community and is a qualified juror.

Q. Mr. Trask—how long have you known him?

A. I have known him 30 years.

Q. What does he do?

A. He is cashier in the Bank of Hawaii, Paia branch.

Q. In Wailuku? A. Paia.

Q. What caused you to put him on the list?

A. Well, he is an intelligent man, a qualified juror.

Q. When you use the word, “qualified” you mean according to citizenship?

A. I mean according to the requirements of a juror. He meets all requirements.

Q. With regard to Mr. Rezens—do you know him? [364]

A. I know him, yes. I have known who he is for—ever since he has been a small boy.

Q. I see. What caused you to put him on the list?

A. Well, I believe his questionnaire qualified him as a juror.

(Testimony of Claude E. Chatterton.)

Q. What about Mr. Ayers?

A. Mr. Ayers—I do not know.

Q. What standard of education to your mind was sufficient to qualify a person as a juror on the Grand Jury list?

A. Well, there was not any particular standard. A man might have only been three or four years in grade school and still be a qualified juror.

Q. Yes.

A. And the answers that he made on his questionnaire had some bearing on it, and personal knowledge that we pick up. In a small community like this, you more or less hear a lot of things about different people, and as Mr. Pombo said, we never dreamed it necessary to—not having the funds to do it—to call witnesses or prospective jurors in to question them. But we did do a lot of questioning ourselves on our own time.

Q. You mean you went around and saw people?

A. That's right—just in the community. When you go around, you talk to so and so. He will say, "I know Mr. Ayers, I know Mr. whoever it is; and you [365] ask him if he knows him and he says yes.

Q. You didn't have those funds to call in prospective jurors whose questionnaires appeared to show them qualified. Therefore, did you select those whom you knew as against those you didn't know?

A. Not the way I saw it, no.

Q. How do you explain the fact——?

A. Because you could take 150 men on this

(Testimony of Claude E. Chatterton.)

list and I believe I would know them all, practically. I know 90% of the men on both the trial and grand jury list.

Q. I understand that. How many of the people of the registered voters en masse in the County—and I think there are something around 6,500—do you know?

A. That would take a long time to go over them one by one.

Q. There were 6,572 registered voters on November 6th, 1946, on all three Islands. What would you say is the percentage of those people that you know personally? A. I couldn't say.

Q. Would you know as many as 90% of them?

A. Oh, no.

Q. You did say you knew 90% of the people on the list.

A. In the lower districts, more populated districts. In the outlying districts, I know very few.

Q. With regard to Mr. Haygood, how long have you known him? A. About two years. [366]

Q. How long have you known him?

A. About two years.

Q. What does he do?

A. He is manager of the Maui Soda and Coca-Cola Bottling Works.

Q. What qualified him in your opinion?

A. Well, the fact that he is a man I considered above average intelligence—met the requirements necessary.

(Testimony of Claude E. Chatterton.)

Q. Do you know Mr. Saka?

A. I don't know Mr. Saka personally. I know who he is and I have business dealings with him over the telephone at times.

Q. Did you consider him qualified?

A. I do.

Q. What about Mr. Fredholm?

A. Mr. Fredholm I have known for—ever since he has been a small boy.

Q. And his business is what?

A. He is superintendent of the Kahului Railroad trucking department.

Q. What qualified him in your judgment?

A. Well, he gets around the country quite a lot and knows the community pretty well, even though he is only a youngster, and he has better than average qualifications as a juror.

Q. What about Mr. Peterson?

A. Mr. Peterson—I work with Mr. Peterson. He is [367] manager of our Puunene Store. The Puunene Store, I might say, is a branch store of the main Kahului Store.

Q. Of the H. C. & S.?

A. Of the H. C. & S. Company.

Q. How long have you known him?

A. I have known Mr. Peterson about ten years.

Q. And what caused you to consider him qualified?

A. Well, he is a very prominent citizen who is very well thought of in the community, does a lot

(Testimony of Claude E. Chatterton.)

of community work and has contact with all walks of life.

Q. What about Mr. Manuel De Ponte?

A. Mr. De Ponte—I know him. I know him personally. He works for the Kahului Railroad Company. He is in the Personnel Department, I believe, and one of the main reasons that Mr. De Ponte was put on is that he has had a lot of jury experience and is a very good juror.

Q. What about Mr. Broadbent?

A. Mr. Broadbent is one of the assistant managers of the Hawaiian Commercial and Sugar Company. I know him personally, and I consider——

Q. How long?

A. I should say about 15 or 18 years. I have known him ever since he has been on the H. C. & S. Company plantation. I consider that Mr. Broadbent is a very fair-minded person, a very intelligent man, and entirely qualified as a juror. [368]

Q. Now, the next one is the one who was injured in the war.

A. Mac Ajifu. I knew him before he went into the service, and as Judge Wirtz—he was the one who said that he was—he would be a good man to serve on the jury because he is a very smart Japanese boy and more or less had no connections with the, as you call them, management and plantation interests.

Q. Did you take that into account as one of the factors in selecting this jury?

(Testimony of Claude E. Chatterton.)

A. I did, yes.

Q. Now, what about Mr. Alu?

A. Mr. Alu is—I just know him to speak to—that's all. I know he is a mechanic in the machine shop, H. C. & S.

Q. Mr. Costa? A. I know Mr. Costa.

Q. How long have you known Mr. Costa?

A. Oh, I would say about 15 years.

Q. And what is his business?

A. He is an electrician in charge of the power plant at H. C. & S. Company mill.

Q. What qualified him?

A. Well, a man who has a very good reputation in the community. The three Commissioners agreed that they believed he would make a good juror.

Q. And is he the superintendent? [369]

A. I don't know what the title is, but he is directly in charge of that power plant which has the—mill plant.

Q. Do you know Mr. Fleming? A. I do.

Q. He is manager of Shell Oil?

A. Yes, sir.

Q. How long have you known him?

A. I have known Mr. Fleming about—I believe since he has been on the Island which is about four years, I believe.

Q. What qualified him?

A. Well, that again was an effort that the Jury Commissioners made to put someone on the list as far as possible who had no direct connections with

(Testimony of Claude E. Chatterton.)

any of the larger corporations, and he is a man of more than average intelligence.

Q. Mr. Elmore is the automobile man?

A. That's right.

Q. And have you known him long?

A. I do. I have known him—I didn't have much contact for many years, but I first knew Mr. Elmore in 1918 in the first World War training camp at Schofield Barracks.

Q. You have known him many years?

A. Yes.

Q. What qualified him?

A. I consider Mr. Elmore as one of our outstanding [370] business men, and I believe that the entire community considers him as such, and as such, he would be a very qualified juror.

Q. Now, Mr. Waterhouse—do you know him?

A. I know Mr. Waterhouse.

Q. How long have you known him?

A. I should say about ten years.

Q. What position does he hold?

A. I thought he was the agriculturist at Maui Agricultural Company, but I understand he is irrigation manager there.

Q. Yes. And what qualified him?

A. He is a young man of very reliable character and met all the qualifications necessary as a juror.

Q. Mr. Feiteira?

A. Mr. Feiteira I have known for probably 20 years.

(Testimony of Claude E. Chatterton.)

Q. And his business?

A. I didn't know until yesterday, but I believe he is head timekeeper at the Maui Agricultural Company. He formerly worked as a buyer at the warehouse.

Q. And what qualified him?

A. I believe Manuel Feiteira has had quite a bit of experience as a juror and knows the community and the conditions in the district in which he lives very well, and is very highly respected member of the Portuguese race.

Q. Did you think it appropriate that there would be representatives of the Portuguese race on the Grand Jury? [371]

A. No, that had no bearing whatever on the selection.

Q. The fact that you made that comment now—wouldn't that indicate that you thought there should be representatives of all racial groups on the Grand Jury?

A. Not necessarily.

Q. You didn't think that?

A. No. He was not put on for that reason whatever.

Q. Was this jury sworn, then, without regard to whether or not all races were represented?

A. Yes, I believe it was.

Q. Race wasn't taken into account?

A. During your first day's testimony when you had your expert from Washington, Mr. Oshima, here, you went into a lot of detailed figures and

(Testimony of Claude E. Chatterton.)

percentages and so forth. The percentage of any one particular man picked on a jury of 50 out of 13,000 qualified jurors is quite a bit of percentage there, too, Mr. Resner.

Q. Yes, but what I am getting at is this—in picking the jury—what I am trying to find out from you, Mr. Chatterton, is whether you Commissioners set up as an indicated fact that you ought to have on the jury representatives of all the different races on the Island.

A. I will go definitely on record that we did not.

Q. You did not. You recognize, don't you, Mr. Chatterton, that this is one of the unusual places in the world where there is a wide variety of races? [372]

A. That is quite right.

Q. In a rather small area. That is correct, isn't it?

A. We did our best to have a competent jury picked. That was our main purpose.

Q. Now, then, with regard to Mr. Moodie—do you know him?

A. I do. Mr. Moodie is manager of Paia Store.

Q. Who owns that?

A. Maui Agricultural Company.

Q. And how long have you known him?

A. I have known Mr. Moodie for I think—I believe he came here about 1936. I have known him ever since he came here.

(Testimony of Claude E. Chatterton.)

Q. What qualified him?

A. The fact that he is one of the prominent business *men* in Paia and what I consider more than average intelligence—meets the qualifications of a juror.

Q. What about Mr. Bruce?

A. I know Mr. Bruce.

Q. How long have you known him?

A. About ten or twelve years.

Q. And he is the manager of the East Maui Irrigation Company?

A. I believe that is his title.

Q. Do you know with what East Maui Irrigation Company is connected?

A. East Maui Irrigation Company is connected with Maui Agricultural Company and the Hawaiian Commercial [373] and Sugar Company, as I understand it.

Q. Are those connected with Alexander & Baldwin?

A. They are.

Q. Do you know Mr. Bruce's qualifications for jury service?

A. Well, he met all qualifications as a juror as listed in the statutes.

Q. Is that the basis on which he was selected—or anything special about him?

A. Nothing special. I don't believe—I don't know, but I don't believe Mr. Bruce has had any recent jury service—not during my time at least.

Q. How long have you known Mr. English?

(Testimony of Claude E. Chatterton.)

A. Mr. English—ever since I came to Maui. That was in 1916.

Q. What does he do?

A. He is head of the automobile—garage department at the Maui Agricultural Company.

Q. And what qualified him for jury duty?

A. The fact that we considered that he was a good citizen—met the qualifications necessary.

Q. What about Mr. Gottlieb Coleman?

A. I don't know Mr. Coleman very well. Just know who he is.

Q. Who is he?

A. He is one of the persons that you had on your list, Mr. Resner, as a caucasian—which I would correct. Mr. Coleman is not a caucasian. He is a [374] part Hawaiian. The fact that he graduated from Kamehameha School signifies to that effect because in the Kamehameha School, you must have Hawaiian blood. I believe that Mr. Oshima read that name off from his cards that he had. That would bring your percentage down slightly.

Q. Now, what does he do, did you say?

A. I didn't know until I heard yesterday. He is in the tractor department. I don't know what he does.

Q. Tractor department where?

A. Maui Agricultural Company. I know he works for Maui Agricultural Company.

Q. What about Mr. Nunes?

(Testimony of Claude E. Chatterton.)

A. Mr. Nunes I have known for many years. He is superintendent of the East Maui county work.

Q. County official or employee?

A. I believe he is, yes. He is—if that is the Nunes, I know him as “Mundo”. Mr. Crockett probably knows. Edmund Nunes is “Mundo”?

Mr. Crockett: That is correct, if the Court please. He is normally known as “Mundo” Nunes.

Mr. Resner: What qualified him, Mr. Chatterton?

Witness: The fact that I believe he is a very upstanding citizen and met the qualifications as a juror.

Q. How long have you known Mr. Richard Baldwin?

A. I have known Mr. Richard Baldwin personally for probably 15 years. [375]

Q. And his ranch is what?

A. Haleakala Ranch.

Q. What qualified Mr. Baldwin?

A. Well, in the up-country district there where the Haleakala Ranch is located, Mr. Baldwin is very well thought of, and is one of the leaders of the community. And we deemed that he would make a good juror.

Q. How long have you known Mr. Tam?

A. I don't know Mr. Tam. I wouldn't know him if I passed him on the street.

Q. He is a farmer? A. He is a farmer.

Q. Mr. Holt—how long have you known him?

(Testimony of Claude E. Chatterton.)

A. I have known Mr. Holt probably twelve years.

Q. He is a forester for the Board of Agriculture?
A. That's right.

Q. What qualified him?

A. I believe Mr. Holt to be one of the outstanding young Hawaiian boys in the community and I think he would make a good juror, and the fact that he works for the Board of Agriculture and Forestry had no bearing upon his selection. Although he is an employee of the Territorial government, he claimed no exemption.

Q. What about Mr. Muroki? How long have you known him?

A. I don't know Mr. Muroki.

Q. He is a store keeper at Libby. [376]

A. Yes.

Q. How long have you known Mr. Plunkett?

A. Don't know him personally.

Q. You know him as a foreman of the East Maui Irrigation Company?

A. Yes, and the only way I know Mr. Plunkett is through his political activity.

Q. He ran for office?

A. He ran for office several times.

Q. And what qualified Mr. Plunkett?

A. Well, in the East Maui district, over in the area past Keanae, Mr. Resner, the selection of jury material is very limited and it may possibly be that Mr. Plunkett has appeared on the jury lists oftener than it would seem natural, but he is one of the few qualified jurors in that area.

(Testimony of Claude E. Chatterton.)

Q. You are talking about the 21st precinct—Keanae?

A. 21st, 23rd—all those precincts from—I might say east of Keanae—from Keanae east. We did our best. In many cases lot of the small precincts did not really have enough registration to entitle them to a representation on the Grand Jury.

Q. There are 64.

A. That would just about qualify them for one—either trial or grand juror, because we base that—I made the figures up myself—based on the total registration. I forgot what it was, but I think 66 voters entitled the district to one representative [377] on the jury—the trial or grand.

Q. 65 male voters in 1946.

A. I think the figures are somewhere in Judge Wirtz's file. We figured them on a percentage basis—trying to get every precinct represented.

Q. Mr. Simpson is vice-president of the Hana Ranch?

A. I only know Mr. Simpson by sight.

Q. What is his qualification?

A. The same fact that you might say applies to Mr. Plunkett. The jury material in Hana is limited, and we figured that Mr. Simpson met all the qualifications and was above average intelligence.

Q. There are about 150 male voters there.

A. Yes. You would be surprised at the few, I believe, who are qualified.

Q. Let me ask you this—in determining the

(Testimony of Claude E. Chatterton.)

number of grand jurors according to the number of voters in a particular precinct, was it according to male voters or all voters, male and female?

A. It was according to the male list, I believe. Anyway, there was some 6,000, I believe.

Q. 6,728 in the November 5th, 1946 election.

A. Of course, we did it on 1944, but it was approximately the same figure—that is, of the male vote.

Q. Did you use the questionnaires for years before 1946, or did you use the questionnaires for the year 1946?

A. Where questionnaires—all the voters in these outside [378] precincts—I forget how many—was it 19? I forget the exact number—the ones you went over yesterday with Judge Wirtz. Every registered voter was sent questionnaires in 1946. Any of those who failed to return a questionnaire, we went through the old files, and if we found them, we would refer to the old one. And there were very few, I might say.

Q. How long have you known Mr. Edward Baldwin?

A. I have known Mr. Edward Baldwin for over 20 years.

Q. He also runs a ranch in the same general vicinity?

A. Yes, Ulupalakua Ranch.

Q. What is his qualification?

A. I consider Mr. Baldwin to be outstanding

(Testimony of Claude E. Chatterton.)

in his community and way above average intelligence, and to meet the requirements of a juror.

Q. How long have you known Mr. Fong?

A. I have known Mr. Fong about 20 years.

Q. He is a contractor now?

A. I don't know what you would call him. He has so many varied interests. He has stores and everything else, but I think he himself devotes most of his time to contracting.

Q. What is his qualification?

A. Well, in Keokeo—that is part of Kula—he is one of the outstanding citizens. He gets around all [379] over the Island and knows many people.

Q. What about Mr. Goodness?

A. Mr. Goodness, I do not know.

Q. How long have you known Mr. Thompson?

A. I have known Mr. Thompson ever since I have been in the Territory—thirty years.

Q. Do you know his business?

A. He is a rancher.

Q. On his own account?

A. On his own account, I believe.

Q. And what qualified him?

A. I think that Charlie Thompson's judgment as a juror is among the highest here. He has had plenty of experience and while he is over age, he did not claim exemption.

Q. How long have you know Mr. Friel?

A. I do not know Mr. Friel at all.

Q. How long have you known Mr. Morris?

(Testimony of Claude E. Chatterton.)

A. I knew Mr. Morris many years ago when he was on the Island of Maui. Since he moved to Molokai, I have no contact with him.

Q. What qualified him?

A. I believe that Charlie Morris is one of Molokai's outstanding citizens, and his qualifications met with the requirements of the Commissioners.

Q. Mr. Auld—how long have you known Mr. Auld?

A. Mr. Auld, by name only—and same thing with Mr. Reinhart. [380]

Q. Only by name? A. That is all.

Q. Let me ask you this—in picking this jury, did you try to get a cross section of the community, Mr. Chatterton?

A. Well—same question comes out—what you figure a cross section and what I figure a cross section——.

Q. Well, I think that is a good point. What do you consider a cross section to be?

A. We consider—in my estimation, the 1947 jury panel is the best jury panel that has ever been picked in the history of this Island.

Q. Let me ask you what you consider a fair cross-section to be. What standard did you employ to select a fair cross section of the community of Maui? A. We used no standard.

Q. No standard? A. No set standard, no.

Q. Did you try to get into the Grand Jury without excluding from it, for example, representatives of the farm labor group?

(Testimony of Claude E. Chatterton.)

A. Mr. Resner, you take your District No. 1. You say they have three hundred and some odd voters, of whom maybe 200 are qualified. We did not go over the entire 200 names. We went down the list until we obtained the number of jurors that that district was entitled to. I might add that the chances of a man being picked on a jury is very remote. I was on [381] this Island 27 years before I was ever summoned on the Grand Jury. My name was never picked in 27 years.

Q. There are two persons from the first precinct?
A. That's right.

Q. And you went down the list, you say, until you were satisfied you got the persons who would make good jurors?

A. If that precinct was entitled to two representatives, when we got the two representatives——.

Q. You stopped?

A. If we felt we had picked the right men, we stopped.

Q. You didn't go down the list of 350 registered voters to determine that 200 or so were qualified; then take the 200 names and put them in a box and draw at random the two?
A. No.

Q. You picked out the two that you thought you ought to have?
A. That's right.

Q. Now to come back to the question I asked you a moment ago—what in your mind would be a fair cross section of the community of Maui with regard

(Testimony of Claude E. Chatterton.)

to occupation, racial, social relations and other groups?

A. I am not qualified to answer that. I don't know.

Q. On this Grand Jury, Mr. Chatterton, on this list of 50, according to our statistics in evidence here, [382] there is a caucasian representation of 56% and a non caucasian representation or the balance is 44%. In the population, according to registered voters, not population as a whole, but according to registered voters in 1946, last year, the caucasian percentage of the registered voters was 22.9; and the non caucasian registered vote was 77.1. Now, do you consider the representation of 56% caucasian on the jury as against 22.9 of the registered voters a fair cross setcion?

A. I really couldn't answer that because your percentages are your percentages, Mr. Resner. We would have to verify those percentages. I would like to see that percentage verified.

Q. Well, answer my question without verifying them, because this record is so far as it can—if it is subject to error, the error will be developed. But to answer my question—is it a fair cross section in your judgment?

A. Does it have to be a fair cross section according to the statute?

Q. Are you asking me?

A. I am asking you.

Q. If his Honor will permit me to answer you,

(Testimony of Claude E. Chatterton.)

I will say that as I read the decisions of the Supreme Court, the Grand Jury and petit jury should be a fair cross section of the community—a representative cross section of the community. And what I am asking [383] you is this—isn't it rather remarkable that in a community which has 22.9% caucasian voters of the male sex, that you find 56% of that same group of caucasians in the Grand Jury list?

Mr. Crockett: If the Court please, we object to the question as it is formed as calling for the opinion of this witness and again invading the province of the Court to decide as to whether or not it is a fair cross section of the men selected on the list.

The Court: It is purely argumentative, Mr. Resner.

Mr. Resner: I will reframe the question, then. Does the fact, Mr. Chatterton, that there are 56% caucasians on this Grand Jury, assuming the truth of our figures, as against 22.9% caucasians among the male voters indicate to you that this is a true cross section of the community?

Witness: Well, I could refer you back to my last statement—that I figure the Grand Jury panel that was picked, regardless of cross sections, is the best Grand Jury that we have had on this Island—and typical of what could be picked.

Q. Do you mean best in the sense of intelligence and education?

A. I mean in fairness, education, intelligence, yes.

(Testimony of Claude E. Chatterton.)

Q. And so far as this 22.9% caucasians among the registered voters, male voters in 1946, as against the [384] 56% of caucasians on the panel—do you consider that a true cross section of the community?

A. That, again, I cannot answer. Possibly yes; possibly no.

Q. You were on the Grand Jury Commission in 1946 too? A. That's right.

Q. In 1946, according to our figures, and again assuming them to be true, Mr. Chatterton, the percentage of caucasians on the Grand Jury was 72% as against 22.9% of caucasians among the male registered voters. You consider that in 1946 with regard to race the Grand Jury was a fair cross section of the community?

A. That I cannot answer.

Q. Is there any reason why you can't answer?

A. I don't know.

Q. Now with regard to occupational makeup of the Grand Jury, Mr. Chatterton, according to our statistics—and assuming their validity for the purpose of these questions to you—it shows that in 1946, there were 93.2% of the—as compared with the population—managerial, entrepreneurial and clerical people.

A. What is that second one?

Q. Entrepreneurial.

A. What does that mean?

Q. People who are in business; people who pro-

(Testimony of Claude E. Chatterton.)

mote, who invest, and so on—and clerical—that there [385] were 93.2% of that kind of people on the Grand Jury, and there were 6.8% of laborers on the Grand Jury. It also shows that of the qualified male voters for jury service, there were 21% of that grouping in the population—that is, managers entrepreneurs and clerical people, and there were 10.9 of—79%, rather, of laborers qualified. Now, taking those figures together, would you say that a Grand Jury composed, as it was in 1946, of 93.2% managers, entrepreneurs and clerical was truly representative of the community?

Mr. Crockett: If the Court please we object to the question as again calling for the opinion of the witness, and the further fact that the question as framed by Counsel entirely omits the other elements that it is necessary for the Jury Commissioners to take into consideration. There is nothing in those bald figures, as he quotes them, which give the Court any idea, or gives the witness a fair chance to answer, as to whether or not out of the manager class, as he calls it, what percentage of the manager class is qualified under the provision of the statute—nothing in the question as framed to indicate what percentage of those 79% of laborers who are qualified under the provisions of the statute. So, therefore, the question as framed and as put to the witness is not a fair question. And for the further reason that it invades the province of the Court in [386] calling for the conclusion of the wit-

(Testimony of Claude E. Chatterton.)

ness which the Court is sitting here to determine for itself.

Mr. Resner: I phrased the questions by citing persons who are qualified for jury duty.

Mr. Crockett: The figures that Counsel has quoted are not necessarily people who have qualified for voters. The witness who was on the stand the other day quoted those figures as being persons whom he deemed as qualified. And their only qualification was that, according apparently to figures which he had compiled, they had passed an 8th grade education. The statute requirements are something entirely different—something more than an 8th grade education. The statute says people who are intelligent and people of moral character—and the legislature has never said that every person who has passed an 8th grade education is automatically qualified for jury duty. That was the conclusion of Mr. Oshima on the witness stand—not the standard this Commission is required to use.

The Court: The Court has heard enough. The Court sustains the objection on the ground that it invades the province of this Court and calls for this witness to give a decision which the Court ultimately on the fact will have to determine. [387]

Mr. Resner: Mr. Chatterton, is a jury which has 93.2% managers, entrepreneurs and clerks on it, as in 1946, a fair cross section of the community?

Mr. Crockett: If the Court please, that is the

(Testimony of Claude E. Chatterton.)

same question—just framed in different words—which the Court has already ruled upon as calling for the opinion of the witness. We object to it on the same ground.

The Court: Again invading my province, Mr. Resner. I am sorry—I am going to have to insist on being the judge on this.

Mr. Resner: I take exception to your Honor's ruling, this and the previous one.

The Court: Exceptions allowed.

Mr. Resner: Mr. Chatterton, what in your opinion would be a fair cross section of the community to be represented on the Grand Jury with regard to occupational groups?

Mr. Crockett: To which we object again, if the Court please, on the same ground.

The Court: Objection sustained.

Mr. Resner: I except. Does your Honor allow the exception?

The Court: Exceptions are always allowed. You are taking it as a record and that is allowed by the Court.

Mr. Resner: I understand. Of course our practice is different. Exceptions are abolished under [388] the Code Pleading procedure, and the mere objection preserves the exception. And I understand your practice is different.

The Court: You note your exception and see that the Reporter's hand moves on that.

Mr. Resner: Thank you, sir. Mr. Chatterton, in

(Testimony of Claude E. Chatterton.)

making up this Grand Jury, did you try to get representatives from all different kinds of occupations, businesses, professions, work, employment?

Witness: So far as possible.

Q. Did you try to get them with regard to the respective proportions that those groups held in the community?

A. No, we didn't use any set percentage figure.

Q. Did you determine that persons who held business positions were at the outset better qualified than those who were not business people?

A. My opinion is the same as Judge Wirtz, Mr. Resner. Your idea of management and my idea of management are two different ideas.

Q. What is yours?

A. I believe a very large amount of men who are not in any way concerned with management—my idea of management is the man in the institution who has the power to hire and fire, and in the institutions that we have here, in the business houses, there are very few of that type. [389]

Q. You wouldn't include, then, among management those who hold supervisory or managerial positions?

A. Not in my book, no.

Q. You would only include the owner himself as management?

A. I am talking about corporations.

Q. I am talking about corporations too. You consider corporate owners as management?

(Testimony of Claude E. Chatterton.)

A. And his designated men directly in charge of the business.

Q. But no one under him would be management?

A. There are others who have the power to hire and fire.

Q. Wouldn't those who occupy supervisory positions be management?

A. I don't believe so.

Q. What are they?

A. They are supervisors.

Q. Yes, but as between management and labor, where do you classify them?

A. As supervisors.

Q. Would you classify them with the labor group or management group?

Mr. Crockett: I submit the question has been already been asked and answered, if the Court please. The witness has already testified supervisors.

Mr. Resner: Will you answer the question, Mr. Chatterton? [390]

Mr. Crockett: I have objected to the question, if the Court please.

The Court: The objection is overruled.

Witness: I will stand on the answer of supervisor. I have no idea whether it would be classed as labor or management.

Mr. Resner: Here is a man by the name of Burns who is a superintendent at Baldwin. Is he management or labor?

(Testimony of Claude E. Chatterton.)

A. I don't know what his duties are, whatsoever.

Q. Here is a gentleman known as Allen, manager of Wailuku Sugar Company.

A. Mr. Allen would come under management.

Q. Here is a man named Bowmer who is cashier at Baldwin Packers. Is he management or labor?

A. I wouldn't say whether he is either one, but he is not management.

Q. And here is Mr. Bruce, manager of East Maui Irrigation Company.

A. I believe Mr. Bruce would come under the heading, management.

Q. Here is Mr. Moodie, manager of Paia Store.

A. That is the same.

Q. Management? A. That's right.

Q. Here is Mr. Broadbent, assistant manager of H. C. & S. Company.

A. I believe Mr. Broadbent has the right to hire and fire. He would be a manager. [391]

Q. Mr. Fleming is a manager?

A. I don't know the policy of the Shell Oil Company.

Q. Mr. Baldwin is a manager?

A. That's right.

Q. Both Mr. Baldwins, as a matter of fact.

A. Correct.

Q. Mr. Ezell would be a manager.

A. I don't know Mr. Ezell's status—whether he has—he is a branch manager, responsible to Honolulu.

(Testimony of Claude E. Chatterton.)

Q. In this group which we refer to as management, entrepreneurial and clerical, are included those as managers as you class them, those who own their own business and are closely identified with them; and clerical workers, which are people in a supervisory position, as used in the Census figures—allied with management—in management positions. It is not a term that we employ, Mr. Chatterton. It is the way the thing is broken down in the United States Census. Now, bearing that in mind, is it your opinion that this Grand Jury on an occupational basis represents a fair cross section of the community?

Mr. Crockett: To which we object, if the Court please, as calling for the opinion of the witness.

The Court: I think again it is invading the province of the Court and that there is no requirement that I know of in the decisions that have been read that there be any one standard of division where percentage is allowed, but that it shall be a fair [392] representation of the community from which it is chosen or the qualified electors. The objection will be sustained.

Mr. Resner: We except.

The Court: We will take a recess at this time until 2 o'clock.

(The Second Circuit Court recessed at 11:58 and reconvened at 2:00 p.m.)

Mr. Resner: Mr. Chatterton, with regard to the questionnaire which has been employed by the Jury

(Testimony of Claude E. Chatterton.)

Commissioners, which is Defendants' Exhibit 12 in evidence, can you tell me why question 7 appears—the nationality of father and mother—in view of the statutory requirement that jurors be selected without regard to race and nativity?

Witness: I had nothing to do with the making up of this.

Q. Did you look at that question with regard to race when it came in?

A. We didn't take it into consideration because the questions above give the Commissioners what information is necessary.

Q. You mean whether the person is a citizen?

A. That's right.

Q. What would be the purpose of asking for a person's nationality on a jury questionnaire?

A. I think that has been gone into—not once, but about a dozen times. [393]

Q. What is your answer?

A. My answer is the same as the others—because the Jury Commissioners are not the only ones who use this questionnaire.

Q. Do you know any lawyers who use the questionnaire?

A. No, I don't have that information.

Q. You don't think it is relevant to any function of the Commissioners—that question?

A. I wouldn't say it wasn't relevant.

Q. Is it relevant?

A. It could be in some cases.

(Testimony of Claude E. Chatterton.)

Q. Which kind of cases?

A. Well, in the case of—there was a question as to whether there had been a mistake made up here—and he came from parents who were—did not come from a country where naturalization could be had——.

Q. Well, let's assume this—I withdraw that. And question 3, when and where born, when answered would demonstrate whether a person was a native born citizen, would it not?

A. That's right.

Q. ““If naturalized, when and where””——.

A. Yes.

Q. Those two questions would show the two ways of obtaining citizenship, wouldn't they?

A. Yes.

Q. What, then, would be the purpose in that regard? [394]

A. I don't know why you are questioning me on it. I don't know.

Q. Well, but you were one of the Commissioners. A. Yes.

Q. Who has used this questionnaire.

A. Certainly.

Q. And you are charged by law with certain duties in selecting jury lists, and I am trying to determine what standard you employed. That is why I am asking you the question about question 7.

A. What is the detriment to have it in there? Don't you want as much information as you can get on a questionnaire?

(Testimony of Claude E. Chatterton.)

Q. I don't want to argue with you, Mr. Chatterton. I merely want to know why, when the statute says that the juror be selected, summoned, returned and sworn without reference to race or place of nativity, if that is the statutory requirement, it is necessary to have a question about nationality on the questionnaire.

A. I can't see why it hurts.

Q. Why do you have it there?

A. I don't know.

Mr. Crockett: Just a minute——.

Mr. Resner: That is all on that.

Mr. Crockett: Okey.

Mr. Resner: Now, why are the questions 9, 10 and 11 used? 9 being, "What is your present occupation?" No. 10 being, "Name your superior if employed—by whom?" [395] And No. 11—"What has been your occupation during the past five years?"

A. That is necessary information.

Q. In what regard is it necessary?

A. To know how a man—whether he has been to school, how long, who he works for, and who his superior is. We have got to have that information.

Q. But you do ask in lines 12 and 13 what a man's schooling is. A. Yes.

Q. So then questions 9, 10 and 11 have no relationship to schooling.

A. How would we know what a man's occupation is if it wasn't on the questionnaire?

(Testimony of Claude E. Chatterton.)

Q. Well, I concede the point that you wouldn't know it unless it was on the questionnaire, but I am asking you what is it on there?

A. I don't know. I didn't make up the forms, Mr. Resner.

Q. You did tell us earlier you thought the jurors were selected without regard to what a man did.

A. Yes, but we want to know what he does.

Q. Can you tell me why you would want to know that if it was of no importance?

A. I didn't say it was of no importance. You are wrong on that statement.

Q. If a man is selected without regard to employment, why is it of importance? [396]

A. I couldn't say.

Q. Do you know when these questionnaires were sent out to the local, or, immediately-near districts in the last period?

A. I think they started sending them out sometime in July. I'm not sure. I have nothing to do with that, but I knew they were going out because I received one myself.

Q. When did you receive it?

A. About the first part of August.

Q. Now, you live where, did you say?

A. Kahului. I vote at Kahului, but I live in Kula. I just recently moved up there.

Q. Did you participate in a decision to send the questionnaires out to the close-by districts?

A. That was decided almost two years ago that

(Testimony of Claude E. Chatterton.)

we would send them out to all precincts in the Territory to every registered voter as time permitted, and we started with the outlying districts with the object in view being to send in to the larger close-in districts as we had time.

Q. Who was charged with the duty of sending the questionnaires out in the close-by districts?

A. I do not know.

Q. Do you know of any field laborers on the Grand Jury list during 1945, 1946 and 1947?

A. I couldn't say. I don't think there are any on the 1947 list—but the 1946 list, I have no recollection [397] what that list comprises.

Q. Did you examine the various questionnaires as they came back?

A. You mean for the current session?

Q. For the Grand Jury of 1947—the questionnaires which came back in 1946 and preceding years.

A. Yes, all three Commissioners were present at every meeting.

Q. I show you the questionnaire of Patrick Ortello, who lives at Post Office Box 382, Rice Camp, Haiku, Maui; born at Haiku, Maui on October 2nd, 1924; parents, Filipino; employed as a—employed by the Kahului Railroad Company; went through the 8th grade at the Hana School; signed by Mr. Patrick Ortello. You probably saw this before? A. I probably have.

Q. That came back on October 2nd, 1946. It appears on your lists on the front page here that

(Testimony of Claude E. Chatterton.)

Mr. Patrick Ortello is disqualified, or, not qualified for jury service. Can you tell me on what basis such a determination was made?

A. No, I cannot.

Q. You are familiar, of course, with the fact that there are jurors who have less than an 8th grade education that are on there?

A. I am quite familiar with that.

Q. There is a requirement in the statute that a person understandably speak, read and write the English language. [398] What was the standard which you Commissioners applied on that requirement?

A. I can't remember that we applied any standard other than the amount of schooling that he had, which would indicate that he could read and write if he had gone to school. We assume that.

Q. What grade, if any, did you fix as a standard?

A. We didn't fix no grade as a standard.

Q. How did you determine it then?

A. Just the judgment of the Commissioners—that is what we are put on there for—to use our judgment.

Q. Now, with regard to persons that you didn't know personally, Mr. Chatterton, how could you, or, how did you exercise that judgment?

A. Just the way—our judgment. You can't analyze a man's judgment. We either decided he was or he wasn't.

(Testimony of Claude E. Chatterton.)

Q. You have already told us the number, the names of those grand jurors you knew. You knew substantially most of them. That is correct, isn't it? So, from your knowledge of them, I assume you could state whether they could understandably speak, read and write English.

A. That helped a lot—knowing them helped a lot.

Q. With regard to the people you didn't know, how could you make a determination on that qualification?

A. Mr. Resner, we only have 50 men to pick out of, as you say, 13,000 so many. [399]

Q. Sixty-five or sixty-six hundred registered voters in 1946.

A. But according to your expert's figures, there were 13,000 so many who were qualified to serve, and I think there was something like 14,000 who had gone through the fourth grade. I don't see how you got those figures, but I didn't have access to the reports.

Q. I still don't understand, Mr. Chatterton, how you fixed the standard of education for the jurors or those who might be jurors among those you didn't know.

A. There is no standard, as I understand it.

Q. What standard, if any, was fixed for your requirement that a person be intelligent and of good character?

A. I think we covered that in my testimony a

(Testimony of Claude E. Chatterton.)

little while ago. We went through that once before. I don't see that it is necessary to answer that question a second time.

Q. You meant good sense and general reputation in the community? A. That is correct .

Q. And that also should apply to the persons that you knew personally? A. Absolutely.

Q. How did you fix a standard for those you did not know personally? [400]

A. As I told you before, we made inquiries around, through friends, and stuff like that with some of them—not on all of them; that is impossible.

Q. It is true, of course—I just want to get it clear in the record—that this Grand Jury was not selected at random from names out of a box?

A. How many times do you have to be told that? But that is about fifty times in the last few days.

Q. That is a fact?

A. That is a fact. It is not pulled out in open court. The 23 names are pulled out in open court.

Q. Do you find it necessary to argue with me, Mr. Chatterton?

A. No, sir, but I do not like to be asked the same question over and over again.

Mr. Resner: If your Honor please, I think you should caution the witness that the witness need not argue with Counsel. I respectfully request of the Court that he so advise the witness.

The Court: There is really no need for either of you to argue with one another.

(Testimony of Claude E. Chatterton.)

Witness: Very well, sir.

Mr. Resner: I am sure, your Honor, I am not trying to argue with the witness.

If your Honor please, I should like to save next in order a number for the questionnaires that we have identified today which we will have photostated and certified and put in the record. May we save that number at this point? [401]

The Court: Mr. Clerk, will you indicate what number you are saving?

Deputy Clerk: That will be Movants' No. 19.

Mr. Resner: That is all on direct examination.

Cross-Examination

By Mr. Crockett:

Q. Mr. Chatterton, as I understand it, when the Commissioners met and you considered the list of voters, which list did you have before you? Was it the 1946 registered voters or was it the 1944?

Witness: The 1944 list of registered voters—not votes case, but registered voters.

Q. And that is the—I withdraw that. What kind of lists did you have—just to get it in the record.

A. They are the lists that are returned to the Clerk's Office by the various precincts in their election returns.

Q. That is, after the election is completed, these books are returned to the Clerk's Office, and they forward a set over to the Clerk of the Court?

(Testimony of Claude E. Chatterton.)

A. I don't know whether it is turned over to the Clerk of the Court. I think it is their permanent records. Whether it is sent to the Clerk of the Court or not, I don't know.

Q. In other words, it is a list that is only available after the election?

A. It is only available after the election. [402]

Q. Do you recall what the total registration was on the 1944 list?

A. As I recall, it was substantially the same as the 1946 in number. However, I think there was a difference in the—so many people left here during the war and lots of them didn't come back, and there was probably quite a difference in the make-up of it, but I think the number was substantially the same, because, as I recall, in our proportioning of the number of jurors for each district we used the factor of 66.

Q. And in respects to the standards which Counsel was questioning you about so far as you are able to recall, did you use the same standards for all persons that were considered—that is, in establishing the qualified lists and those that were not on the qualified lists?

A. I don't quite understand that question.

Q. Well, did you use one standard for one person and another standard for some other person when you were trying to determine the intelligence or their fitness for jury duty? Did you use the same standard for everybody so far as you were able to do so?

(Testimony of Claude E. Chatterton.)

A. We had no set standard, but trying to follow a general line so far as possible.

Q. In other words, just used your ordinary common sense? A. That's right. [403]

Mr. Crockett: That is all.

The Court: The Court would like to ask a question in view of the examination, subject to Counsel's objection. Mr. Chatterton, have you any present recollection of disqualifying any name because of your judgment that the person involved did not understandably speak and read and write the English language?

Witness: No, sir.

The Court: That is all.

Mr. Resner: No further questions.

(Witness excused.)

Mr. Resner: Call Mr. Auld.

The Court: Do I understand, Mr. Resner, that you are now beginning to call the persons on the actual panel of the——.

Mr. Resner: On the array, your Honor.

The Court: May I ask the purpose of calling these individuals as to any matter that has not already been covered?

Mr. Resner: I desire to inquire of the members of the array the following information: their names, their residences and citizenship their business activity exactly, exact post held their business associations, their race exactly, their clubs and social connections exactly, their schooling exactly, their

prior jury experience, if any; their knowledge of the Jury Commissioners; whether they know that the [404] persons who are defendants in this case whose cases it is proposed to submit to the Grand Jury are members of the International Longshoreman's and Warehouseman's Union; whether they know whether the defendants were arrested in connection with incidents growing out of the strike in the pineapple industry which occurred in the month of July, 1947; what is their attitude towards these defendants because of their affiliation, one, with the union, and their participation in the strike, and next, what was their attitude toward the pineapple strike itself.

The first burden of those questions is directed toward the challenge to the panel as a whole and the list; the second part of it to the challenge for cause to the jurors individually. On yesterday, Counsel for the Prosecution inquired of four members of the jury their union affiliation. If that is pertinent, then so are these items about which we propose to seek information.

The Court: Will all the members of the actually serving, or, that is, Grand Jury that has been selected and drawn for service who are attendants in the court room kindly step forward and occupy the seats in the jury box. And, Mr. Bailiff, if there are not enough chairs, will you get some.

I might inform Counsel that there is one member who apparently was subpoenaed whom I have had to [405] excuse until tomorrow morning.

Mr. Resner: Mr. Peterson?

The Court: Mr. Fong. He is engaged upon a government contract and was under orders by the government inspector to pour concrete today, and for that reason, I excused him until tomorrow morning.

Mr. Clerk, will you swear in this entire group of gentlemen?

Mr. Resner: I must say, your Honor, that Mr. Peterson who was subpoenaed spoke to your Honor and asked to be called whenever he was wanted because he was busy, and we stated we had no objection to that.

The Court: Suppose we take a five minute recess while you collect all of these gentlemen, and then I will come back here.

(The Second Circuit Court recessed at 2:22 p.m.)

(The Second Circuit Court reconvened at 2:33 p.m.)

The Court: Mr. Clerk, will you now collectively swear in this group of men under the ordinary witness oath?

Kenneth Auld, Joseph H. Trask, Edward S. Bowmer, Allan Ezell, Richard H. Baldwin, Robert P. Bruce, Charles Thompson, John Plunkett, E. Stanley Elmore, Paul R. Reinhart, Edward H. K. Baldwin, Anthony A. Tam, Jack Costa, Wai Ken Tom and Walter Holt,

having been first duly sworn, collectively, were examined and testified as follows:

Examination by the Court

The Court: Gentlemen, be seated. I will ask you in sequence—having taken the oath in sequence—to state your name for the purpose of identification and your place and position of work, beginning with the first gentleman here.

(Indicating.)

Witness: Kenneth Auld, Molokai. Plantation superintendent—section superintendent.

The Court: What precinct?

Witness: I think it is the 31st. I am not sure.

The Court: What company? [407]

Witness: California Packing Corporation.

The Court: Thank you.

Witness: Joseph H. Trask, Paia, Maui. Manager of the Bank of Hawaii, Paia Branch.

The Court: Thank you.

Witness: Edward S. Bowmer, Lahaina, Maui. Cashier and assistant bookkeeper of Baldwin Packers.

Witness: Allan Ezell. Hawaiian Air Lines traffic manager. Wailuku.

Witness: Richard H. Baldwin. Haleakala Ranch Company. Manager of Haleakala Ranch.

Witness: Robert P. Bruce, Paia, Maui. Consulting civil engineer and manager of East Maui Irrigation Company.

Witness: Charles Thompson, Kihei, District of Wailuku.

The Court: Are you employed by anybody, Mr. Thompson?

Witness: No, sir.

The Court: What do you do as a matter of occupation or activity?

Witness: Well, I am a retired ranchman.

Witness: John Plunkett, Keanae, 21st precinct. Supervisor for the East Maui Irrigation Company in that section.

Witness: E. Stanley Elmore, Kula. Present manager of the Valley Isle Motors.

Witness: Paul R. Reinhart, Maunaloa, Molokai. Assistant plantation manager. [408]

The Court: Mr. Reinhart, you have not been sworn in as a grand juror as yet?

Witness: No, sir.

The Court: This is your first appearance?

Witness: Yes, sir.

The Court: But you were one of those drawn out of a box to be a member of the Grand Jury?

Witness: That's right.

Witness: Edward H. K. Baldwin. Manager of Ulupalakua Ranch, Ulupalakua.

Witness: Anthony A. Tam, farmer, Makawao.

Witness: Jack Costa, Chief electrician, H. C. & S. Company sugar mill. Puunene.

Witness: Wai Ken Tom, Wailuku, Maui. Supervisor of revenue of Mutual Telephone Company.

Witness: Walter Holt, Haiku, Maui. Associate forester with the Board of Agriculture and Forestry.

The Court: Gentlemen, I want to inform you collectively and individually before I ask a question in this proceeding that there is pending in this court, coming up from the District of Lanai, County of Maui, in Criminal No. 2413, a complaint which purports to charge: "That Diego Barbosa, John Maile, Victor Degamo, Harry Kapena Kaopuiki, Isami A. Nitta, Ah Sing Ah Ho, James Kia Aikala, Shigeru Yagi, Basiliso Arruiza, Midori Oda, Shigeyuki Matsuura, Lanai City, District of Lanai, Territory of Hawaii, on to-wit the 14th day of July, 1947, [409] together with divers other persons whose names are unknown, then and there being of their own authority assembled together with disturbance, tumult and violence and striking terror and tending and intending to strike terror into others, thereby being in unlawful assembly, did unlawfully and feloniously join together in doing and beginning to do certain acts with tumult and violence to-wit: assaulting, beating, striking, pushing, shoving, inflicting corporal injuries to and upon Anthony D. Fernandez, Buck Masuto Manriki, Frederick S. Johnson, Jerome Harrington and others and using menacing language and gestures and other hostile signs and demonstrations tending and intending to strike terror into said Anthony D. Fernandez, Buck Masuto Manriki, Frederick S. Johnson, Jerome Harrington and others and thereby endangering the life, limb, health and liberty of them the said Anthony D. Fernandez, Buck Masuto Manriki, Frederick S. Johnson, Jerome Harrington and others

contrary to the form of the statutes in such cases made and provided"—the same complaint which I have been reading from in Criminal File No. 2413 being a file from one Andrew S. Freitas, who, the Court is informed, is a police officer of this County.

That also there is pending in this court and part of these proceedings that we are now engaged in, in Criminal No. 2412, a complaint originating from [410] the District of Lanai, County of Maui, that:

"Andrew S. Freitas first being duly sworn says: 'That Abraham Makekau, Elpidio Siruet, Mariano Baldua, Narcisso Sipe, Antonio Mendes, in Lanai City, District of Lanai, County of Maui, Territory of Hawaii, on to-wit the 15th day of July, 1947, together with divers other persons whose names are unknown then and there being of their own authority assembled together with disturbance, tumult and violence and striking terror and tending and intending to strike terror into others, thereby being in unlawful assembly, did unlawfully and feloniously join together and beginning to do certain acts with tumult and violence to wit: assaulting, beating, striking, pushing, shoving, inflicting corporal injuries and using menacing language and gestures and other hostile signs and demonstrations tending and intending to strike terror into one Jacob Kalua Nahinu and thereby endangering the life, limb, health and liberty of him the said Jacob Kalua Nahinu contrary to the form of the statutes in such cases made and provided.' " Signed and sworn to by the same Andrew S. Freitas who, the Court is informed, is a police officer of this County.

These charges, the records show, having been brought before the District Court of Lanai, each defendant waived preliminary examination in that court and the accused were bound over to the Circuit Court awaiting the action of the Grand Jury of this court.

The report may show that I have been reading from the complaints on file in the two records named, and any check-up of mistaken pronunciation or leaving out of any words may be supplied from those records.

Now, gentlemen, I do not want to assume to usurp the functions of the regular Judge of this court, but in view of the challenges made upon members of the panel, it is necessary in order to preserve as far as possible the impartiality of these proceedings that I remind you—those of you who have assembled together when called originally as grand jurors in this division of the Circuit Court—of portions of the charge given you at that time that—“In your investigations you will receive only legal evidence to the exclusion of mere reports, suspicions and hearsay evidence. Subject to this qualification, you will receive all the evidence presented which may throw light upon the matter under consideration——” and so on.

I am reading from Page 7 from the Charge given, as the records show, to the Grand Jury when it assembled this year.

Going on—“And further, if in the course of your inquiries, you have reason to believe that there is

other evidence not presented to you but which is within your reach and which would qualify or explain away the charge under investigation, it will be your duty to order such evidence to be produced."

Passing over, the Court called attention to the oath which was administered at the time of the original assembly, emphasizing on Page 9 of the Charge:

"First: It is provided that you will diligently inquire and true presentment make of all such matters and things as shall be given you in charge, or shall otherwise come to your knowledge touching this present service.

"That you will present no one through envy, hatred or malice.

"That you shall leave no one unpresented through fear, favor, affection, gain, reward, or hope therefor, but will present all things truly as they come to your knowledge according to the best of your understanding."

And further in the Charge, the Court called attention: "If, in the course of your proceedings, any case or matter shall come before you in which any member of the Grand Jury shall be personally interested or involved, or otherwise disqualified, he shall not participate in the consideration of such case or matter but shall withdraw therefrom."

There is another portion of this Charge [413] which if I can find it without delay I want to remind you of. Here it is on Page 5 of the Charge.

“Upon you, Gentlemen, there is cast a double duty; one, a duty to the Government, or, more properly speaking, to society, to see to it that parties against whom there is just ground to charge the commission of crime, shall be held to answer the charge; and, on the other hand, a duty to the citizen to see that he is not subjected to prosecution upon accusations having no better foundation than public clamor or private malice.”

With those reminders from the Charge given and particularly in view of the matters that I have read from the criminal complaints that have been submitted to this Circuit Court for action by the Grand Jury and that are awaiting the disposal of the questions when we get a properly constituted Grand Jury, and for the purpose of this proceeding this afternoon or while you are in attendance here—assuming for the time being the possibility that any of you gentlemen might be amongst such a panel—the question from the Court is: that being apprised of the persons whose names I have read that are charged upon the matters to be presented sometime to a properly constituted Grand Jury if these proceedings continue, and having in mind the possibility that everyone of these persons so charged are members of a trade union, and having in mind that they have been members [414] of a trade union involved in the late pineapple strike, and having in mind the principle applicable in the United States of America that every person is presumed to be innocent until found guilty, but that your stage in

the proceedings, if you should be members of a Grand Jury panel, would be that the persons named before you were innocent of anything thereby charged until as properly presented convinced you as members of the Grand Jury, if you were members, that there was a *prima facie* showing of some offense upon which the individuals, identified properly by the evidence, should be put on trial, is there any member of the group that is now before me, who, if they were members of such a Grand Jury panel taking such an investigation, would find in connection with their position in life or their neighborhood in any precinct community any cause for making it impossible, due to disqualification for interested participation or otherwise, to consider any persons, so charged, to be innocent until properly qualified and to give such persons the benefit of your impartial consideration? If there is any gentleman who would find it necessary for himself to request that he be permitted to step aside, will you raise your hand now and so express it.

(No response.) [415]

The Court: (Continuing.) I take it, gentlemen, with the pause that has been given that there is no person in the group now sworn before me who finds in their deep conscience any reason to have either a prejudice against the defendants, their attorneys or the situation involved in such an investigation that would make it impossible for them to be impartial in their consideration. Is that your response? If there is anybody who disagrees with

that response and again desires to take advantage of expressing a request to withdraw from any consideration of being a part of such a tribunal, will you raise your hand.

Mr. Resner: If your Honor please, I should like to interpose an objection to the Court's questions of the members of the Grand Jury array in this particular case upon the grounds that I believe the Court has usurped in this particular instance the duty and the prerogative of Counsel to examine witnesses, and particularly to direct to your Honor's attention the decision of the Supreme Court of the Territory in the case of Territory of Hawaii vs. Sam Van Culin, 36 Hawaii Reports, page 153; and further for the record to take an exception upon the ground that I believe this examination by the Court of the jurors has rendered the proceedings as far as these defendants are concerned unfair and not an impartial hearing. [416]

The Court: I am not through, Mr. Resner, and your turn is coming. The exception may be noted.

Now, gentlemen, those are the preliminary matters—with one exception. I must add a specific caution in connection with this factor in the event that you are further examined and also in the event that any one of you may serve in a further investigation of the charges. It is the general law of this jurisdiction that you are not bound by any Prosecutor's attorney of the degree of offense that he thinks evidence that might be produced before a Grand Jury might show.

To be concrete and illustrative. I read to you the charges that have come up and are awaiting action by a Grand Jury. The charges in themselves charge riot. The evidence in itself might conceivably not come up to a standard about which the jury would be entitled to advise themselves from the Court as to what would constitute riot. In other words, you are advised that if any incident of this character occurred during a labor union dispute, it is the law of the land that the labor union has a right to peaceably assemble. It is the law of the land that the labor union has a right to peaceably picket. And if in the course of an activity of that sort, spontaneous bursts of passion lead to miscellaneous assaults between parties that are present, that in and of itself [417] would not create out of that assembly an unlawful assembly. It is only in the event that the evidence produced before such a body convinced them that, under the guise of a peaceful assembly, and under the guise of peaceful picketing, there was in fact a concerted plan and conspiracy to intimidate, coerce and prohibit other peaceful citizens from pursuing their lawful matters before parties that were involved, and that through that concerted plan and as a part of the concerted plan the innocent-appearing assembly was really an assembly for the purpose of producing force and violence as a means to its own peculiar ends, that there would be any justification to assume that persons identified as being parties to such a thing could be indicted for a felony of that character. In other words, the evidence produced

before a body of grand jurors might be no more than the fact that misdemeanors of general flare-up, of passion, assault and batteries or mere assaults were involved although the numbers would be identifiable as being more than one. It might be that it was no higher than a general outburst of an affray.

What I am trying to say is that the mere fact that a police officer charges a higher crime does not mean that a Grand Jury in its impartiality has to find what the police officer wants. One of the [418] purposes that I read you in the Charge of the Court was that you are protectors of the innocent, you are protectors of those to be hounded by passion and prejudices of the community just as much as you are protectors of the community in case the evidence warrants other action.

With that in mind, I am going to leave it to the Attorney for the Defendants in the respective claims for information that he desires to get out of each of you in the matters that he gives you—without a free-for-all voir dire examination, but to get into the record the facts that he has the right to have here and a chance to interrogate you individually if he so desires.

Now, Mr. Resner, you want to take exception to those remarks?

Mr. Resner: Yes, I do—upon the grounds previously stated.

The Court: The exception will be noted. You may proceed, Mr. Resner, along the line that you stated to the Court you wanted information.

Mr. Resner: Yes, your Honor.

KENNETH AULD

Direct Examination

By Mr. Resner:

Q. Mr. Auld, you were the first gentleman.

Witness: Yes, sir.

Q. Your exact residence? [419]

A. Hoolehau, Molokai.

Q. How long have you lived there?

A. I have lived there twenty-two years.

Q. And your exact business activity?

A. Section superintendent, California Packing Corporation—pineapple industry.

Q. You have the power to hire and fire?

A. No, I haven't, but through my recommendation—through recommendation to the upper—to my management.

Q. Are you a part of management?

A. I am not. I am just a superintendent—that's all.

Q. What is your race?

A. I am part-Hawaiian—Scotch-Hawaiian.

Q. What schooling have you had?

A. High school and three years of college.

Q. In the Territory? A. Yes, sir.

Q. Do you know the Jury Commissioners—Mr. Pombo, Mr. Chatterton and Judge Wirtz?

A. Yes, I do.

Q. Have you been acquainted with them for a long time?

(Testimony of Kenneth Auld.)

A. Well, with Mr. Pombo—that is about all I have been acquainted with for quite a while.

Q. And was your concern involved in the recent pineapple strikes? [420] A. Yes, I was.

Q. Were you involved yourself?

A. No, I was not—not exactly.

Q. What do you mean by that, Mr. Auld?

A. Well, I had—I knew the strike was on, and as an executive of the company we were to carry on the business just the way we were supposed to do every day, and as far as the strike was concerned—why, the strike was on and that is all there was to it. We didn't even talk about the thing. To get the pineapples out, that was all I was concerned about.

Q. What is your attitude toward the International Longshoreman's and Warehouseman's Union?

A. I think ILWU is a good organization. I have nothing against it. It is part of the laborers' concern—their free right.

Q. With regard to the defendants here who are members of the ILWU and who were on strike at the time you mentioned, do you have any feeling with regard to those men because they were involved in the strike as members of the ILWU?

A. No, sir.

Q. None whatsoever? A. Nothing.

Q. I have no further questions of Mr. Auld.
Mr. Crockett: I have no questions.

(Testimony of Kenneth Auld.)

Mr. Resner: Are you personally a member of the [421] Chamber of Commerce?

Witness: No, sir.

Q. Oh the Junior Chamber of Commerce?

A. No, sir.

EDWARD H. BALDWIN

Direct Examination

By Mr. Resner:

Q. Mr. Edward Baldwin—your residence, sir?

Witness: Ulupalakua, Maui.

Q. And the length of your residence?

A. Since 1923.

Q. Your exact business?

A. Ranch manager.

Q. Is this a ranch which you own?

A. No.

Q. A ranch which you manage? A. Yes.

Q. Who is the owner of the ranch?

A. Mr. F. F. Baldwin.

Q. What is your race, Mr. Baldwin?

A. American.

Q. You were born in the Territory?

A. I was born in the Territory.

Q. What schooling have you had?

A. I have been through preparatory school—
one year of college.

Q. Have you had prior experience as a juror?

A. One term. [422]

(Testimony of Edward H. Baldwin.)

Q. Grand Jury? Trial? A. No.

Q. Do you know the Commissioners personally?

A. I do.

Q. How long have you known them?

A. Good many years.

Q. That is, Mr. Pombo, Mr. Chatterton and Judge Wirtz?

A. Yes. I have known ever since Judge Wirtz has been here.

Q. Are you a stockholder in any companies which were involved in the recent pineapple strike?

A. Yes.

Q. Which one?

A. Hawaiian Pine. I believe that is the only one.

Q. Maui Pineapple?

A. Well, no—I own Maui Agricultural Company stock, but I don't own——

Q. You don't own any Maui Pine stock?

A. No.

Q. What is your attitude toward the ILWU?

A. I never had any experience with them—I don't know.

Q. What is your attitude towards these defendants in view of the fact that they are members of the ILWU and were on strike against the pineapple companies?

A. I don't know the facts there either.

Q. Did you have any feeling in that respect?

A. No.

(Testimony of Edward H. Baldwin.)

Q. None at all? A. No.

Q. What was your attitude towards the pineapple strike itself?

A. Well, I wasn't entirely up on that either. I did feel that the demands made by the union were rather excessive.

Q. Are you a member of either the Chamber of Commerce or the Junior Chamber of Commerce?

A. I am a member of the Chamber of Commerce.

Q. Did you participate in the resolution that condemned the union for the strike?

A. No, sir.

Q. Did you agree with the resolution? Do you know about it? A. I do not.

Q. At the time of the pineapple strike, the Territorial Chamber of Commerce issued a resolution to members of the union. You know anything about it? A. I know nothing about it.

Q. It was done without your participation?

A. Yes.

Mr. Resner: No further questions.

Mr. Crockett: I have no questions, if the Court please. [424]

RICHARD H. BALDWIN

Direct Examination

By Mr. Resner:

Q. Mr. Richard Baldwin?

Witness: Yes.

Q. What is your residence, Mr. Baldwin?

A. Kula, Maui.

Q. And your place of birth?

A. Honolulu.

Q. You have lived in the Territory all your life?

A. I have.

Q. And your business?

A. Manager of the Haleakala Ranch.

Q. Are you a owner of that ranch?

A. No, I am not.

Q. Who is the owner?

A. There are several—Mr. S. A. Baldwin, Mrs. H. A. Baldwin and Mrs. J. W. Cameron.

Q. Are you a stockholder in any of the pineapple companies or plantations?

A. Yes, Baldwin Packers.

Q. Maui Pine?

A. Through Maui Agricultural Company.

Q. Through Maui Agricultural Company, Now, your race is what? A. American.

Q. What schooling have you had?

A. Three years of college.

Q. And what prior jury experience? [425]

A. One term.

Q. On the Grand Jury? A. Yes.

Q. By the way, on the question of race what you mean is caucasian? A. Haole.

(Testimony of Richard H. Baldwin.)

Q. You mean caucasian—I mean American really describes everybody here. A. Yes.

Q. What is your attitude toward the ILWU?

A. I don't know much about it. I have had no experience with it.

Q. What was your attitude toward the recent pineapple strike?

A. Oh, I thought that—I felt that the demands as finally accepted, if they had been accepted in the beginning the workers would have been a lot better off. I thought the demands, original demands were high.

Q. Do you have any feeling against the ILWU because of the demands made? A. No.

Q. What is your attitude toward these men, who were members of the ILWU, because of their participation in the strike? A. Impartial.

Q. You feel—you have any feeling because they were involved in the strike against concerns in [426] which you own stock interests? A. No.

Q. You have no feeling in that regard?

A. No, I have not.

Q. You feel you could refuse to indict them just as well as indict them?

A. Depending upon the evidence.

EDWARD S. BOWMER

By Mr. Resner:

Direct Examination

Q. Mr. Bowmer?

Witness: Yes.

Q. Could you tell me your address?

A. Lahaina, Maui.

Q. Where were you born? A. England.

Q. How long have you been a resident of the Territory? A. Since 1919.

Q. And your race is caucasian? A. Yes.

Q. And your schooling has been what?

A. One year of high.

Q. What juror experience have you had?

A. One term, trial jury.

Q. Here in Maui? A. Maui, Wailuku.

Q. What is your exact business activity?

A. Cashier and assistant bookkeeper for Baldwin Packers. [427]

Q. That is a pineapple concern? A. Yes.

Q. Your company was directly involved in the recent pineapple strike? A. It was.

Q. And you are one of the management there?

A. No—just a cashier.

Q. But are you in that part of the business which is the management end of the business?

A. I have no management to do.

Q. Are you in that end of the business which is the management end of the business?

A. More in the supervisor group than anything else.

Q. Supervisor of what, Mr. Bowmer?

(Testimony of Edward S. Bowmer.)

A. I have charge of the journals, posting books, shipping, preparing shipping papers.

Q. Now, what is your attitude toward the ILWU?

A. I have no attitude towards the ILWU at all.

Q. None of any kind? What is your attitude toward ILWU activity in the recent pineapple strike?

A. None at all.

Q. You had no feeling?

(Witness shaking head.)

Q. Did you express yourself? A. No.

Q. You remained on the Island throughout?

A. Yes.

Q. What is your attitude toward these defendants in [428] this case whose cases are supposed to be brought before the Grand Jury because of the strike?

A. Impartial.

Q. Completely so? A. Yes.

Mr. Resner: No other questions.

The Court: I would like to bring out something, or ask you, Mr. Resner. The last two of these gentlemen brought out they are related in business activity to the Baldwin Packers—I think it was a pineapple company. The location of that company, as to whether it has anything to do with the Lanai situation that is under investigation here, is also pertinent. I think it should be differentiated for the record.

Mr. Resner: I think it a matter of more or less common knowledge, if your Honor please, that the

(Testimony of Edward S. Bowmer.)

pineapple industry acted as a whole in connection with the recent strike.

The Court: Yes, but under the caution that these jurors, if they were to be jurors, were charged by the Court that anything that they would be interested in—it might be confusing in this record, just the general term, “interest in pineapple company.” These gentlemen whom you have interrogated are not in the company that was doing business on Lanai where the incident occurred. I think that is material—to avoid confusion in a blank record here that is to be [429] perused by others.

Mr. Resner: I just don’t deem it so.

The Court: If you don’t, then I will. Mr. Bowmer, where is the Baldwin Packers?

Witness: Lahaina.

The Court: Lahaina?

Witness: Yes, sir.

The Court: Was it in any way involved in any of the Lanai incidents that are covered by the charges being presented to the Court?

Witness: Not that I know of.

The Court: That is all.

Mr. Crockett: If the Court please, might I suggest that the questions asked Mr. Richard Baldwin and Mr. Edward Baldwin which indicated that through the Maui Agricultural Company they had some indirect interest in the Maui Pine. I think the record should show that Maui Pine is on the Island of Maui, and is not——

The Court: You can ask those questions.

(Testimony of Edward S. Bowmer.)

Mr. Crockett: May I be permitted at this time?

Mr. Resner: I want to save an exception, if your Honor please, to the Court's question. I take the position that it usurps the functions of Counsel under the rule announced in *Territory of Hawaii vs. Van Culin*, and I take an exception in order to save the point in the record. Not only does it usurp the function of Counsel, but I believe the question is [430] immaterial to the issue developed here so far as the defendants are concerned and this is cumulative with regard to the other questions the Court has asked of the jurors and other questions in the proceedings.

The Court: In view of what you now put into the record, Mr. Resner, the record should also show that the substitute Judge now sitting is not as familiar with the localities on the Island of Maui and the County of Maui as the local Judge, and that for my own sake as a final decider of the facts and the law in this proceeding before me, I desire to be informed as to what the connection might be between the general name, pineapple company, and the location in which these incidents occurred.

Mr. Crockett: May I have the permission to question Mr. Baldwin?

The Court: Yes.

EDWARD H. K. BALDWIN

Cross-Examination

By Mr. Crockett:

Q. Mr. Edward Baldwin, you mentioned that you have an indirect interest in Maui Pineapple Company through your ownership of stock in the M. A. Company.

Witness: That si correct.

Q. First of all, when you refer to the M. A. Company, what company is that?

A. Maui Agricultural Company. [431]

Q. Where is that located? A. Paia.

Q. And was the M. A. Company as such in any wise involved in the recent pineapple strike?

A. I do not know the circumstances.

Q. And the Maui Pine Company that you refer to—where is that located?

A. Headquarters at Maliimaile, I believe.

Q. Haliimaile—on the Island of Maui?

A. On the Island of Maui.

Q. And Haliimaile, for the benefit of the Court, where is that in relation to Wailuku or Makawao?

A. That is near Makawao.

Q. Just a short distance below Makawao?

A. Yes.

The Court: That is on the slopes of Haleakala?

Witness: Yes.

Mr. Crockett: And so far as you know was the Maui Pineapple Company in any wise involved in the incident which occurred on the Island of Lanai?

Witness: Not that I know of.

RICHARD BALDWIN

Cross-Examination

By Mr. Crockett:

Q. Mr. Richard Baldwin—was the Maui Pineapple Company the same company that Mr. Edward Baldwin has just mentioned and described?

Witness: Yes. [432]

Q. Do you know whether or not the Maui Pine was in any wise involved in the incident which is alleged to have occurred on the Island of Lanai?

A. Not that I know of.

KENNETH AULD

Cross-Examination

By Mr. Crockett:

Mr. Crockett: I think Mr. Kenneth Auld was referred to as being a pineapple worker.

Witness: Yes, sir.

Q. With what company are you connected with?

A. California Packing Corporation.

Q. I think you refer to it as C.P.C.?

A. Yes.

Q. Was your company in any wise involved in the incident which occurred on the Island of Lanai?

A. I don't know, as far as I am concerned.

Q. So far as you are concerned, it was not.

EDWARD BOWMER

Further Direct Examination

By Mr. Resner:

Q. Mr. Bowmer, Baldwin Packers is a member of the Hawaiian Employers' Council, isn't it?

Witness: I believe it is.

Q. And didn't the Hawaiian Employers' Council handle the negotiations of the pineapple strike for the industry?

A. I suppose they did—if they were members of that organization. [433]

Q. Mr. Bowmer, didn't the Hawaiian Employers' Council handle the strike for the pineapple industry?

A. I suppose it did.

Q. Well, you know they did, don't you?

ROBERT P. BRUCE

Direct Examination

By Mr. Resner:

Q. Mr. Bruce?

Witness: Yes.

Q. What is your address, Mr. Bruce?

A. Paia, Maui.

Q. And how long have you lived in the Territory?

A. About twenty years.

Q. Where were you born?

A. Scotland.

Q. Your race is caucasian?

A. Yes.

Q. Your exact occupation?

A. I am a civil engineer.

Q. Any business connections?

(Testimony of Robert P. Bruce.)

A. I am also manager of East Maui Irrigation Company.

Q. Is that connected with the Baldwin interests?

A. Yes.

Q. Which ones? A. What do you mean?

Q. Which Baldwin interests—Alexander & Baldwin or the pineapple companies?

A. H. C. & S. and M. A. Company. [434]

Q. Which are both connected with Alexander & Baldwin? A. Yes.

Q. Are you a stockholder in any of the pineapple companies? A. No.

Q. Are you a stockholder in any of the Baldwin concerns? A. No.

Q. What schooling have you had?

A. I graduated from college.

Q. What prior experience have you had?

A. I have never served on any other jury except this Grand Jury.

Q. The instant one? A. Yes.

Q. What is your attitude toward the ILWU?

A. It is completely impartial.

Q. You think you have a neutral attitude?

A. Yes. I have dealt with the ILWU and the dealings have been friendly.

Q. What is your attitude toward these defendants involved, as they were, in the recent pineapple strike?

A. Impartial. Lots of friendly dealings with the union. I have not been against the union as such.

(Testimony of Robert P. Bruce.)

Q. Do you have anything against anything in connection with the union as such? I gather that inferentially from your reply. [435]

A. You asked about these defendants. I have nothing against these defendants.

Q. I gathered from your answer—and I may be wrong in this—I gathered in your reply some feeling of criticism in some other direction. Am I right in that inference?

A. No, I don't think so. You mean against the ILWU?

Q. Yes, and its membership.

A. Our company has had an ILWU union and my dealings have been on a friendly basis with them.

Q. Mr. Bruce, did you recently call together your workers and inquire of them whether they wanted to withdraw from the ILWU?

A. No, the workers had a meeting in which they—after the meeting, they signed a petition in which they stated they did not want to be represented by the ILWU.

Q. Who called the meeting?

A. The workmen.

Q. You are sure of that? A. Yes.

Mr. Resner: I have no further questions of Mr. Bruce.

Mr. Crockett: I have no questions.

Mr. Resner: Is Mr. Burns present?—No, he is in San Francisco. Mr. Cornwell—not here. Is Mr. Costa here? [436] Witness: Yes.

JACK COSTA

Direct Examination

By Mr. Resner:

Q. Mr. Costa, what is your occupation?

Witness: I am chief electrician at the H. C. & S. Company mill.

Q. Chief electrician at the H. C. & S. Company mill. How long have you had that position?

A. Fourteen years.

Q. Have you had any prior jury service?

A. Yes, once.

Q. Grand Jury or trial? A. Trial.

Q. What schooling have you had?

A. High school.

Q. Do you know these Commissioners personally? A. Yes, I do.

Q. For a long time?

A. All the time I been on this Island, yes.

Q. And how long have you been a resident of the Island?

A. Fourteen years—seven years once before.

Q. What is your race, Mr. Costa?

A. Portuguese.

Q. You are caucasian? A. Yes.

Q. What is your attitude toward the ILWU?

A. Nothing at all. I haven't anything against it. I have quite a number of them under my charge.

Q. What is your attitude towards these defendants involved in the recent pineapple strike?

A. Nothing at all.

(Testimony of Jack Costa.)

Q. What is your attitude about the recent pineapple strike?

A. Nothing much there except I thought it was—I was hoping they would come to some agreement without having to take—to go on strike. That's all.

Q. You have any feeling about the union in connection with its strike activities?

A. No, I haven't.

Mr. Resner: No further questions of Mr. Costa.

Mr. Crockett: I have no questions of Mr. Costa.

E. STANLEY ELMORE

Direct Examination

By Mr. Resner:

Q. Mr. Elmore?

Witness: Yes.

Q. What is your address?

A. I live in Kula.

Q. How long have you been a resident of the Territory? A. Little over 31 years.

Q. And your business is what?

A. I am president and manager of Valley Isle Motors.

Q. Do you have any stock interests in any of the pineapple companies? A. I do not. [438]

Q. Your race is caucasian?

(Witness nodding.)

Q. What prior jury experience have you had?

A. I was on the Grand Jury panel in Hilo dur-

(Testimony of E. Stanley Elmore.)

ing my 24 years' residence there—I imagine seven or eight times—I don't remember.

Q. And this is your first service?

A. No, my second or third service on Maui.

Q. What schooling have you had?

A. Three and a half years of college.

Q. What is your attitude toward the ILWU?

A. I believe in organized labor. I have nothing against them.

Q. What is your attitude toward the defendants involved in the recent pineapple strike?

A. I consider them innocent until proven guilty.

Q. The same is true of any charges that might be presented of them? A. That's right.

Q. What about the pineapple strike itself? What attitude did you have about that?

A. Well, my only attitude to the strike—I felt that the demands were excessive in face of the fact that they were getting a good wage and the demands were excessive. That was my only attitude toward the recent strike.

Q. Are you a member of the Territorial Chamber of Commerce? [439]

A. No, sir, I am a member of the Maui Chamber of Commerce.

Q. Is that affiliated with the Territorial?

A. I don't think so.

Q. Did the Maui Chamber issue a statement against the strike? A. I don't remember.

Mr. Resner: No further questions.

Mr. Crockett: No questions.

ALLAN H. EZELL

Direct Examination

By Mr. Resner:

Q. Mr. Ezell?

Witness: Yes.

Q. You are, I understand, the branch manager of Hawaiian Air Lines? A. Yes, sir.

Q. What is your residence, Mr. Ezell?

A. Waikapu, Maui.

Q. How long have you lived in the Territory?

A. Eight years.

Q. And what schooling have you had?

A. Two years of university.

Q. What prior jury experience?

A. None.

Q. This is your first service? A. Yes.

Q. What is your race? [440]

A. Caucasian.

Q. What is your attitude towards the ILWU?

A. Neutral.

Q. You are neither for or against it?

A. Neutral, except that I feel, of course—I have done a lot for the working man—have had plenty of experience working with my hands too.

Q. So you favor organized labor because it does good for working people?

A. It has done good.

Q. With regard to the pineapple strike, what is your attitude toward that?

A. I was in hopes it would come to an early conclusion.

(Testimony of Allan H. Ezell.)

Q. Because you didn't want to see a strike occur?

A. Just didn't feel that—that it would damage the Territory's economy.

Q. Just what was your attitude towards the workers on strike who are defendants in this case?

A. No feeling whatsoever.

Q. Do you think that in connection with the pineapple strike there are two sides to it—that the Factors might be wrong as well as the union demands excessive?

A. There are generally two or three sides—the third side being a combination of both.

Q. You think you would be fair as a grand juror? A. I think I could. [441]

Mr. Resner: No further questions.

Mr. Crockett: No questions.

Mr. Resner: Is Mr. Fong here?

The Court: Mr. Fong is the gentleman I excused until tomorrow morning.

Mr. Resner: Oh, yes. Mr. Goodness is not here, I take it. Mr. Holt?

Witness: Yes.

WALTER HOLT

Direct Examination

By Mr. Resner:

Q. You are with the Board of Forestry of the Territory? Witness: Yes, sir.

Q. How long have you lived in the Territory?

A. Nearly 44 years.

Q. And what schooling have you had, Mr. Holt?

A. Graduated from the University of Hawaii.

Q. What prior jury experience? A. None.

Q. Do you know the Jury Commissioners personally? A. Yes, I do.

Q. You do? A. Yes.

Q. And your race is what? A. Caucasian.

Q. And what is your attitude about the ILWU?

A. I believe in organized labor. [442]

Q. As such, that includes the ILWU, I take it?

A. I assume so, yes.

Q. You think that, Mr. Holt?

A. Yes, I do.

Q. What was your attitude toward the recent pineapple strike?

A. Well, I was hoping it wouldn't occur because I was afraid it would affect the Territorial employees' bonus.

(Laughter.)

Q. Did it disturb your bonus?

A. I beg your pardon?

Q. It didn't disturb your bonus?

A. Fortunately not.

Q. What is your attitude toward the workers

(Testimony of Walter Holt.)

who participated in the pineapple strike—the defendants here?

A. I believe I have an impartial viewpoint.

Q. You have an impartial view toward the strike itself?

A. Yes, I do.

Mr. Resner: No further questions.

Mr. Crockett: I have no questions.

Mr. Resner: Mr. Maeda—he is the public accountant. He is not here. Mr. Peterson went to some fair—County Fair business. We are supposed to call him. Mr. Plunkett?

Witness: Right here. [443]

JOHN PLUNKETT

Direct Examination

By Mr. Resner:

Q. You have been on the Grand Jury list for a long time. This is your first service?

Witness: No, this is my third, I think.

Q. Your residence? A. Keanae, Maui.

Q. Your business?

A. Supervisor, East Maui Irrigation Company, Nahiku and Keanae.

Q. Is the East Maui Irrigation Company connected with any other concerns?

A. One is—connected with H. C. & S. and M. A. Company.

Q. And in turn, that is, with Alexander & Baldwin?

A. I believe so.

(Testimony of John Plunkett.)

Q. How long have you lived in the Territory?

A. All my life.

Q. What schooling have you had?

A. Kamehameha School.

Q. And what is your race, Mr. Plunkett?

A. Hawaiian-Irish.

Q. What is your attitude toward the ILWU?

A. Well, as man to man, because I handle labor, some of them are all right; some of them are not quite fair.

Q. What do you mean by that?

A. As I say, some are all right. As far as their ILWU is concerned, I have no objection about them. [444]

Q. I gathered from what you said that you have had some objection to something and I was trying to find out what it was.

A. No objection at all.

Q. As far as the union is concerned?

A. Yes.

Q. What about the defendants in this case whose cases it is proposed to bring before the Grand Jury—that were involved in the pineapple strike?

A. I don't know them so I don't have any feeling against them.

Q. What was your attitude about the strike itself?

A. I thought it was wrong at the beginning, but the demand was more than what labor ought to have and that was no time to have a strike go on. That was my feeling at that time.

(Testimony of John Plunkett.)

Q. Did you feel there could be two sides to the dispute?

A. Oh, yes, there is always two sides.

Q. That the industry might be wrong in its attitude? Did you feel that could be so?

A. I felt that way too.

Mr. Resner: No further questions.

Mr. Crockett: I have no questions.

Mr. Resner: Mr. Reinhart?

Witness: Yes. [445]

PAUL REINHART

Direct Examination

By Mr. Resner:

Q. You live where, Mr. Reinhart?

Witness: Maunaloa, Molokai.

Q. What company are you connected with?

A. Libby, McNeill & Libby.

Q. They were one of the concerns involved in the recent pineapple strike? A. Yes.

Q. What is your position there?

A. Assistant plantation manager.

Q. How long have you lived in the Territory?

A. Since 1938, with the exception of four years in the army.

Q. What schooling have you had?

A. Five years college.

Q. Your race is caucasian? A. Yes.

(Testimony of Paul Reinhart.)

Q. What is your attitude toward the ILWU?

A. Impartial.

Q. You give that answer in view of the position you hold with the Libby Company?

A. That's right.

Q. What is your attitude toward the defendants here whose cases it is proposed to bring before the Grand Jury in view of the fact that they were involved in the recent pineapple strike?

A. Impartial. [446]

Q. You have any feeling at all? A. None.

Q. What is your attitude toward the pineapple strike?

A. I didn't want to see a pineapple strike. Naturally I wouldn't want to see one. But there was one, so we made the best of it.

Q. But what is your attitude toward the union?

A. Impartial. It is up to the individual. If any individual wants to join the union, that is up to him.

Q. But what was your attitude toward the strike itself—the fact that the union did call a strike?

A. I didn't want to see a strike.

Q. Is Libby, McNeill & Libby affiliated with the Hawaiian Employers' Council? A. They are.

Q. And the Hawaiian Employers' Council handled the pineapple strike for the industry, is that correct?

A. As far as I know, they did. Now I don't know what went on in Honolulu.

(Testimony of Paul Reinhart.)

Q. To your knowledge, that is what happened?

A. That's right.

Mr. Resner: No further questions.

Cross-Examination

By Mr. Crockett:

Q. Mr. Reinhart, Maunaloa that you refer to—that is on the Island of Molokai? [447]

Witness: Yes, sir.

Q. And so far as you know, was Libby, McNeill & Libby's pineapple division on the Island of Molokai in any wise concerned with the incident that occurred on Lanai? A. Not that I know of.

Q. Do you know whether Libby, McNeill & Libby is a local corporation or is that a foreign corporation—that is, a Mainland corporation?

A. Mainland corporation.

Mr. Crockett: That is all.

Mr. Resner: Mr. Tam is here?

Witness: Yes.

ANTHONY A. TAM

Direct Examination

By Mr. Resner:

Q. What is your residence, Mr. Tam?

Witness: Makawao, Maui.

Q. How long have you lived in the Territory?

A. Forty years.

Q. And your business is what?

A. I am a farmer.

(Testimony of Anthony A. Tam.)

Q. Oh, yes. Lower Paia

A. No, Makawao.

Q. Your race is Chinese? A. Chinese.

Q. What schooling have you had?

A. Three and a half years college.

Q. What jury experience have you had? [448]

A. Trial jury, once.

Q. Do you know the Jury Commissioners?

A. Yes, I do.

Q. In this case?

A. The Commissioners, yes.

Q. Have you known them long?

A. Well, I have known Pombo practically all my life. Judge Wirtz—since I was on the trial jury. Mr. Chatterton—I have seen him around.

Q. What is your attitude toward the ILWU?

A. I believe in organized labor.

Q. And when you say that, does that mean that you believe in the ILWU as a part of organized labor? A. Yes.

Q. Is that right? A. Do I believe what?

Q. Is that right—you say you believe in organized labor? A. I do.

Q. That is, you believe in the right of men to join unions of their own choosing? A. Yes.

Q. And does that include the ILWU in your judgment? A. Yes.

Q. Do you have any feeling about the ILWU in this particular pineapple strike? A. No.

Q. Do you have any feeling about these defend-

(Testimony of Anthony A. Tam.)

ants as [449] members of the ILWU involved in the pineapple strike? A. No.

Q. Do you feel you are impartial as far as you are concerned? A. I do.

Q. Is that right? A. Yes.

Mr. Resner: No further questions.

Cross-Examination

By Mr. Crockett:

Q. Mr. Tam, you say you are a farmer. Do you own your own farm?

Witness: I own my own farm.

Q. And do you have any employees?

A. I have no regular employees, but I do hire once in a while when I need help. I do most of the work myself.

Q. And what type of farm do you operate?

A. Grass and raise cattle—cattle farm.

Mr. Crockett: That is all.

CHARLES E. THOMPSON

Direct Examination

By Mr. Resner:

Q. Mr. Thompson, you have been on the jury before, sir?

Witness: Yes, sir.

Q. How many times—on the Grand Jury or trial jury? [450]

A. On the Grand Jury and trial jury ten to twenty times.

(Testimony of Charles E. Thompson.)

Q. You are retired now?

A. Well, I never did work for nobody. So I was retired 50 years ago.

Q. You were retired when you started?

A. I was retired when I started.

Q. A very envious position.

A. Never did work for nobody, so I retired 50 years ago.

Q. You live where? A. Kihei, Maui.

Q. How long—have you been in the Territory all your life? A. Born and raised here.

Q. What schooling have you had?

A. Only went as far as public school — 8th grade.

Q. And I assume you have known the Jury Commissioners for a long time? A. Yes.

Q. Your race is what?

A. German-Hawaiian.

Q. And what is your attitude toward the ILWU? A. Impartial.

Q. You are sure about that? A. Yes.

Q. What is your attitude toward the defendants in this case whose cases it is proposed to bring before [451] the Grand Jury?

A. That is their right to strike, and when they strike it is up to them—and that is their privilege—that is their privilege.

Q. What was your attitude toward the recent pineapple strike?

A. That was perfectly all right. They wanted to

(Testimony of Charles E. Thompson.)

strike—that is up to them. They demanded higher wages. If they are entitled to it, they have a perfect right to strike.

Q. Do you have any stock interests in any of the pineapple companies? A. No.

Q. You are what we call an independent citizen, Mr. Thompson, is that right?

A. I was broke 50 years ago and I am still broke.

Mr. Resner: Thank you.

Mr. Crockett: I have no further questions.

WAI KEN TOM

Direct Examination

Q. Mr. Tom?

Witness: Yes.

Q. You are the office manager of the Mutual Telephone Company?

A. I am supervisor of revenue.

Q. Where do you live?

A. Wailuku, Maui.

Q. How long have you lived in the Territory?

A. All my life.

Q. What schooling have you had?

A. Finished the St. Anthony's School—local St. Anthony's School.

Q. What grade is that equivalent to?

A. I believe that was the ninth at that time.

Q. And your race is Chinese?

A. Chinese.

(Testimony of Wai Ken Tom.)

Q. Have you had prior jury experience?

A. Yes, one term. Trial.

Q. And this is your first term on the Grand Jury?

A. That's right.

Q. What is your attitude toward the ILWU?

A. Impartial. I believe in organized labor.

Q. What was your attitude toward the recent pineapple strike?

A. Well, I didn't take much interest in it—didn't have time to read.

Q. You had no feeling about it then?

A. No.

Q. What is your attitude toward these men who are charged here because of their participation in it?

A. Impartial.

Q. You have no feeling in that regard?

A. No.

Mr. Resner: No further questions.

Mr. Crockett: I have no questions. [453]

JOSEPH H. TRASK

Direct Examination

By Mr. Resner:

Q. Mr. Trask—is he here?

Witness: Yes.

Q. You are the last on the list, Mr. Trask.

A. Good.

Q. What is your residence? A. Wailuku.

Q. You are the manager of the Bank of Hawaii?

(Testimony of Joseph H. Trask.)

A. That's right.

Q. What is your race, Mr. Trask?

A. Caucasian.

Q. And how long have you lived in the Territory? A. About 33 years.

Q. And what schooling have you had?

A. I have had four years of preparatory school.

Q. How many prior juries, if any, have you served on? A. This is the first.

Q. Have you served on the trial jury?

A. No.

Q. Do you know the Jury Commissioners?

A. Oh, yes.

Q. Have you known them for a long time personally? A. Very long time.

Q. What is your attitude toward the ILWU?

A. Impartial. I haven't made no opinions on the ILWU.

Q. Do you have any attitude toward labor?

A. No. [454]

Q. Have you expressed any attitude?

A. No.

Q. What about the recent pineapple strike—did you have any opinion about that?

A. Well, for economic reasons, I would rather see the strike not occur, but I didn't form any opinions.

Q. What about the defendants, the accused here, whose cases it is proposed to present before the Grand Jury—have you any feeling about them be-

(Testimony of Joseph H. Trask.)

cause they were involved in the recent pineapple strike? A. No, I would be impartial.

Q. No feeling? A. No feeling whatsoever.

Mr. Resner: I have no further questions of Mr. Trask.

Mr. Crockett: I have no questions, if the Court please.

Mr. Resner: That is all the jurors here, your Honor. The others are Mr. Thompson and Mr. Peterson.

The Court: You are all through with these gentlemen? Does the Prosecution desire them any more?

Mr. Crockett: No, we do not.

The Court: Gentlemen, you are excused.

(Witnesses excused.)

Mr. Resner: If your Honor please, I propose to put on all of the defendants for limited purposes—merely to identify themselves in much the same manner we identified the jury. [455]

The Court: Have you notified the Clerk as to what type of interpreter we are going to have?

Mr. Resner: I don't think we will need any. At least we will try without one.

The Court: You have made such a toil for the Reporter, trying to get the results.

Mr. Resner and Mr. Crockett, I think there is one matter that might be dealt with. While the Court takes judicial notice of its files, yet for the purpose of anyone handling the record what is in

the Court's mind wouldn't be readable. There is upon the records of this court and I have before me here certified copies of the Clerk's minutes of the drawing of the 1947 Grand Jury. I would have it marked for identification, and in the interim between now and tomorrow if you will just inspect it. If you have any objection, call my attention to it. It is a certified copy of the minutes of the Clerk at that drawing which seems to me to be a part of the record.

Deputy Clerk: Court's Exhibit——

The Court: Court's Exhibit No. 2 for identification. And in the interim, between now and tomorrow morning, you are to inspect it.

Mr. Resner: Call Mr. Barbosa—Diego Barbosa.

DIEGO BARBOSA

having been first duly sworn, was examined and testified as follows:

The Court: You understand?

(Witness nodding.)

Deputy Clerk: Please state your name.

Witness: Diego Barbosa.

Direct Examination

By Mr. Resner:

Q. Where do you live, Mr. Barbosa?

Witness: I live at—I stay Lanai.

Q. Are you a citizen or not?

A. From Philippine Islands.

(Testimony of Diego Barbosa.)

Q. Citizen of the Philippine Islands?

A. Yes.

Q. How long have you been in the Territory of Hawaii? A. I came Hawaii 1928.

Q. What is your occupation? What kind of work do you do? A. Works in the pineapple.

Q. Are you a member of the ILWU? Are you a member of the International Longshoreman's and Warehouseman's Union? A. Yes, the union.

Q. Were you on strike in the recent pineapple strike? A. Yes.

Q. Were you arrested in connection with the strike? A. I forgot. [457]

Q. Were you arrested in connection with the strike—yes or no. A. Yes, arrested strike.

Mr. Resner: That is all.

The Court: Just a minute.

Mr. Crockett: No questions, if the Court please.

(Witness excused.)

Mr. Resner: John Maile.

JOHN MAILE

having been first duly sworn, was examined and testified as follows:

Deputy Clerk: Please give your full name.

Witness: John Maile.

Direct Examination

By Mr. Resner:

Mr. Resner: Where do you live, Mr. Maile?

(Testimony of John Maile.)

Witness: Lanai City—Kamalapau, Lanai.

Q. What kind of work do you do?

A. Crane operator.

Q. For whom?

A. Hawaiian Pineapple Company.

Q. What is your race?

A. Hawaiian-white.

Q. Hawaiian? A. Hawaiian.

Q. Are you a citizen? A. Yes, sir. [458]

Q. Registered voter. A. That's right.

Q. Are you a member of the ILWU?

A. I do.

Q. Were you in the recent pineapple strike?

A. That's right.

Q. Were you arrested in connection with the strike? A. That's right.

Q. No further questions. Oh, what schooling have you had, Mr. Maile? How far did you go to school? A. Seventh grade.

Q. Being what school?

A. Grammar school.

Cross-Examination

By Mr. Crockett:

Mr. Crockett: You say you were arrested in connection with the strike. Just what were you charged with doing?

Mr. Resner: If your Honor please, I am going to object to that. The record speaks for itself. All we are seeking to do is identify these defendants—not go into facts.

(Testimony of John Maile.)

The Court: You opened it up with your question. Counsel has a right to ask what he means by the pineapple strike.

Mr. Resner: With what is in the complaint is what he is charged with. [459]

The Court: That is not necessarily what he may mean by his answer and you may mean by your question. Read the question, Miss Reporter.

Reporter: (Reading) "Q. You say you were arrested in connection with the strike. Just what were you charged with doing"?

Witness: I think while picketing.

The Court: What was the answer?

Witness: I think while picketing.

The Court: Is that what you understand you were charged with doing? Picketing?

Witness: I think so.

Mr. Crockett: Whereabouts did the picketing take place? A. At the harbor there.

Q. You mentioned that you are a member of the ILWU and that you were arrested in connection with the strike. Was that picketing that you mentioned being engaged in—was that ordered by the ILWU?

Mr. Resner: If your Honor please, I think that irrelevant. I think that on cross-examination as far as Counsel has a right to do is as far as the direct examination takes him.

The Court: Objection overruled. Read the question, Miss Reporter.

(Testimony of John Maile.)

Reporter: (Reading) "Q. You mentioned that you are a member of the ILWU and that you were arrested in connection with the strike. Was that picketing [460] that you mentioned being engaged in—was that ordered by the ILWU"?

Witness: I don't know.

The Court: What is the answer?

Witness: I don't know.

Mr. Crockett: How did you happen to be picketing if you don't know whether it was ordered by anybody of the ILWU?

Witness: Say that again.

Mr. Crockett: Please read it, Miss Reporter.

Reporter: (Reading) "Q. How did you happen to be picketing if you don't know whether it was ordered by anybody of the ILWU"?

Witness: We just come out and picket—that's all.

Mr. Crockett: You mean, then, that the ILWU didn't tell you to picket?

Mr. Resner: If your Honor please, the question is irrelevant. It has been asked and answered already.

The Court: Objection overruled.

Mr. Crockett: Will you read the question, Miss Reporter?

Reporter: (Reading) "You mean, then, that the ILWU didn't tell you to picket"?

Witness: No.

Mr. Crockett: Did anybody tell you to picket?

(Testimony of John Maile.)

A. We just come out and picket. That's all I know. [461]

Q. You picketed of your own volition? That is, nobody told you to picket?

A. Say that again.

Q. What is that?

A. I can't understand you.

Q. Read the question again.

Reporter: (Reading) "You picketed of your own volition? That is, nobody told you to picket"?

Witness: During strike, we just come out and picket—that's all.

Mr. Crockett: Will you answer the last question I gave you.

Mr. Resner: He did answer it, if the Court please. I submit the witness has just answered the question. He said, "We just come out and picket."

Mr. Crockett: My question was directed to whether or not he was told by anyone to picket.

The Court: That is his answer to that particular question.

Mr. Crockett: You mean, then, that nobody in connection with the ILWU told you to come out and picket?

Mr. Resner: I am going to object to that as having been answered and answered on two or three prior occasions.

The Court: Objection overruled. Read the question, Miss Reporter.

Reporter: (Reading) "You mean, then, that

(Testimony of John Maile.)

nobody [462] in connection with the ILWU told you to come out and picket”?

Witness: I am connected with the ILWU. We just come out and picket while strike is on.

The Court: Were you an officer?

Witness: No.

Mr. Crockett: Whereabouts did this picketing occur which you said you had connection with?

A. Say that again.

Q. Where did the picketing occur you say you were arrested in connection with?

A. At Lanai—Kamalapau—at the dock there.

Q. At the dock? A. That’s right.

Q. That was, according to the complaint, was on a Monday afternoon—of July 14th?

A. I don’t remember.

Q. And did you or did you not remember any person telling you to go down and picket that afternoon?

Mr. Resner: If your Honor please, that has been asked and answered a number of times already.

The Court: I think it has at this time, Mr. Resner. Objection sustained.

Mr. Crockett: If the Court please, I assume the—what I have in mind is this—you know what you are charged with in this particular case?

Witness: I get no idea.

Mr. Crockett: Then if you don’t know who sent you down there, then your picketing was not in connection with the strike. It was not authorized by the ILWU.

(Testimony of John Maile.)

Mr. Resner: If the Court please, I object to that as being argumentative.

The Court: Objection sustained.

Mr. Crockett: No further questions.

Mr. Resner: That is all, Mr. Maile.

(Witness excused.)

The Court: We will take a recess until nine o'clock tomorrow morning.

(The Second Circuit Court adjourned at 3:59 p.m.) [464]

Thursday, September 18th, 1947—9:00 a.m.

Deputy Clerk: Criminal No. 2412—Territory of Hawaii vs. Abraham Makekau, et al., and Criminal No. 2413—Territory of Hawaii vs. Diego Barbosa, et al.

Mr. Resner: Ready, if your Honor please.

Mr. Crockett: Ready for the Prosecution, if the Court please.

Mr. Resner: Call Mr. Fong.

HENRY S. S. FONG

having been first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Resner:

Deputy Clerk: Please give your full name.

Witness: Henry S. S. Fong.

Mr. Resner: Mr. Fong, where do you live?

(Testimony of Henry S. S. Fong.)

Witness: Keokea, Kula, Maui.

Q. And how long have you lived there?

A. Ever since I was a child.

Q. How long has that been now?

A. Forty-four years.

Q. And what is your business?

A. Merchant and contractor.

Q. And you are a member of the Chinese race?

A. Yes. [465]

Q. How long have you been on the Grand Jury?

A. About two years.

Q. This is your second term? A. Yes.

Q. Before that time, were you on the trial jury?

A. Trial jury, yes.

Q. And how long were you a trial juror?

A. One year.

Q. Are you personally acquainted with the Jury Commissioners—that is, Mr. Pombo, Mr. Chatterton and Judge Wirtz?

A. Mr. Chatterton and Judge Wirtz, yes.

Q. Do you know Mr. Pombo? A. No.

Q. I see. How long have you known Mr. Chatterton?

A. Well, ever since he was the manager of the Kahului Store.

Q. And how long have you known Judge Wirtz?

A. Since about three years, I guess. Since he was living up Kula.

Q. Now, you are familiar with the recent pineapple strike? A. Yes.

(Testimony of Henry S. S. Fong.)

Q. You are—I mean you know about the recent pineapple strike? A. Yes, I know.

Q. And in your duties as a grand juror, do you know that the cases that this case is all about grew out [466] of the pineapple strike?

A. Not on Lanai.

Q. I beg your pardon?

A. I don't know anything about this case.

Q. What I am getting at is do you know that the defendants who are in court—that their cases grew out of the pineapple strike in Lanai—that that is what they are about? A. No.

Q. You don't know anything about these defendants? A. I don't know anything.

Q. I beg your pardon? A. I don't know.

Q. You don't know? A. No.

Q. Do you know anything about the pineapple strike? A. Well, I heard about it.

Q. I mean is it a matter of common knowledge?

A. I don't quite get you.

Q. Is the pineapple strike something that everybody in Maui knows about? A. Yes, sir.

Q. Do you know that a number of members of the Longshoreman's Union, the ILWU, that is, were arrested in connection with the pineapple strike?

A. No.

Q. You do not know that? A. No. [467]

Q. Do you know anything about the ILWU?

A. No.

Q. You know nothing about these defendants?

(Testimony of Henry S. S. Fong.)

A. No.

Q. Do you have any feeling about anybody who was involved in the strike? A. No.

Q. You have no feeling at all?

A. No feeling.

Q. Is that right? A. Yes.

Mr. Resner: No further questions.

Mr. Crockett: If the Court please, just for the information and purpose of the record, this Mr. Fong was a member on the active list of grand jurors who was supposed to have appeared yesterday and who was excused by the Court on account of being a contractor.

The Court: Yes, I recognize the name and I was going to inform the record myself as to that.

Mr. Crockett: I have no questions of Mr. Fong.

The Court: I would like to ask him a question in view of Counsel's questions to enlighten myself.

Examination by the Court

The Court: Mr. Fong, you say you have been on the Grand Jury two years?

Witness: Yes. [468]

The Court: Do you mean that you have served on the panel of the Grand Jury that has considered cases two different years or that you were simply on the list?

Witness: Two terms.

The Court: You have been two terms on the active panel?

Witness: Yes.

(Testimony of Henry S. S. Fong.)

The Court: When was the first term?

Witness: One in 1946 and one in 1947.

The Court: That is all.

Mr. Crockett: Might I——

Cross-Examination

By Mr. Crockett:

Mr. Crockett: Were you called and sworn as a grand juror in 1946?

Witness: Yes, I did. I came. I am pretty sure—in 1946.

The Court: What part of the year?

Witness: Well, I don't remember.

Mr. Crockett: How many times have you served this year—in 1947? That is, how many sessions have you attended? A. Two times, I think.

Q. You have attended two sessions this year, haven't you?

A. One downstairs and one up here.

Mr. Crockett: I think, if the Court please, I think what the witness is referring to is that during the early part of the year, we had a session at which time we used this court room; and the last session that we had, we had it down in the library of the court while this court room was being repaired.

Witness: Yes.

Mr. Crockett: In other words, both those times were this year, Mr. Fong?

Witness: Yes.

Q. Now, you still think you served—actually ap-

(Testimony of Henry S. S. Fong.)

peared and served in 1946 or have you confused yourself with the two times this year?

A. Two times this year. I don't remember last year—1946.

Q. So you think now you did not actually serve in 1946?

The Court: Yes or no.

Witness: I don't remember in 1946.

Mr. Crockett: So when you refer to serving twice, you are referring to the two sessions in——

A. 1947.

Q. The 1947 term. That is all.

Redirect Examination

By Mr. Resner:

Q. How much schooling have you had, Mr. Fong?

Witness: Up to seventh grade. [470]

Q. Up to the seventh grade? A. Yes.

Q. Is there any question in your mind about anything that has been said here to you this morning? A. What is that?

Q. Is there anything that has been said here to you this morning that you have any question about?

A. No.

Q. That you don't understand?

(No response.)

Q. Do you understand everything that has been going on here?

A. I don't know why you folks bring me down here for.

(Testimony of Henry S. S. Fong.)

Q. I mean do you understand what has been said here?

A. What do you mean by "consent"?

The Court: Do you understand what has been going on here this morning?

Witness: Oh, yes.

Mr. Resner: You didn't get the word that was used, is that it?

Witness: Yes, I don't get the word.

Q. What I want to know is—do you know what is going on here?

Mr. Crockett: I submit, if the Court please, that is an indefinite proposition to ask the witness what has been going on. All he knows is what has been asked and the questions answered. There are a lot of people who have been present in court all the time who perhaps don't specifically understand what is going on.

Mr. Resner: That is all.

The Court: That is all, Mr. Fong.

(Witness excused.)

Mr. Resner: Call Mr. Degamo.

The Court: You want Mr. Fong any more—either of you?

Mr. Resner: No.

Mr. Crockett: No.

VICTOR DEGAMO

having been first duly sworn, was examined and testified as follows:

Deputy Clerk: Please state your name.

Witness: Victor Degamo.

Direct Examination

By Mr. Resner:

Q. Your name is Victor Degamo?

Witness: Yes.

Q. Where do you live? A. Lanai City.

Q. How long have you lived there?

A. 1939—about seven years ago.

Q. What kind of work do you do?

A. Truck work.

Q. Truck driver? A. Yes. [472]

Q. What is your race, Mr. Degamo? Your nationality? A. Filipino.

Mr. Resner: I might say for the record, your Honor, that the terms "race" and "nationality" probably have been used indiscriminately here—that is, that strictly speaking, the races of mankind are limited and there are a number of nationalities among them, and I suppose the distinction we make here is that of between caucasian and non-caucasian.

Now, are you a citizen, Mr. Degamo?

Witness: No.

Q. Are you a member of the ILWU?

A. Yes.

Q. You are?

(Witness nodding.)

(Testimony of Victor Degamo.)

Q. You have been at Lanai working as a worker in the pineapple industry since 1939?

(Witness nodding.)

Q. Down until the present time?

(Witness nodding.)

Q. Is that right? A. Yes.

Mr. Resner: That is all.

Mr. Crockett: No questions.

(Witness excused.)

Mr. Resner: Harry Kapena Kaopuiki? [473]

HARRY KAPENA KAOPUIKI

having been first duly sworn, was examined and testified as follows:

Deputy Clerk: Please give your full name.

Witness: Harry Kapena Kaopuiki.

Direct Examination

By Mr. Resner:

Q. Where do you live, Mr. Kaopuiki?

Witness: Lanai.

Q. How long have you lived there?

A. All my life.

Q. You were born there, were you?

A. Yes.

Q. You are a citizen of the United States?

A. Yes.

Q. What is your race or nationality?

(Testimony of Harry Kapena Kaopuiki.)

A. Hawaiian.

Q. Have you gone to school here? A. Yes.

Q. What school? A. Lanai.

Q. At Lanai? A. Yes.

Q. What grade did you reach?

A. Fourth grade.

Q. Fourth grade? A. Yes.

Q. Are you a member of the ILWU? [474]

A. Yes.

Q. What kind of work do you do?

A. Crane operator.

Q. Crane operator? A. Yes.

Q. For what company?

A. Hawaiian Pine.

Q. Hawaiian Pine? A. Yes.

Mr. Resner: That is all.

Mr. Crockett: No questions.

(Witness excused.)

Mr. Resner: Isami Nitta?

ISAMI NITTA

having been first duly sworn, was examined and testified as follows:

Deputy Clerk: Please give your full name.

Witness: Isami Nitta.

The Court: Say it out loud, so I can hear it.

Witness: Isami Nitta.

(Testimony of Isami Nitta.)

Direct Examination

By Mr. Resner:

Q. Isami Nitta—is that right?

Witness: Yes.

Q. Where do you live, Mr. Nitta?

A. Kamalapau, Lanai.

Q. How long have you lived there? [475]

A. Twenty years.

Q. Where were you born?

A. At Nalehu, Hawaii.

Q. You are a citizen of the United States?

A. Yes.

Q. What kind of schooling have you had?

A. Went to the 8th grade.

Q. In what school? A. Waiohinu School.

Q. What kind of work do you do?

A. Crane operator.

Q. And how long have you done that kind of work? A. About 20 years.

Q. Are you employed by the Hawaiian Pine-apple Company? A. Yes.

Q. At Lanai? A. Yes.

Q. And how long have you been employed there?

A. Twenty years.

Q. Are you a member of the ILWU?

A. Yes.

Mr. Resner: That is all.

Mr. Crockett: No questions.

Mr. Resner: Oh, one further question. What is your nationality or race?

(Testimony of Isami Nitta.)

Witness: Japanese.

Mr. Resner: Japanese. That is all.

(Witness excused.) [476]

AH SING AH HO

having been first duly sworn, was examined and testified as follows:

Deputy Clerk: Please give your name.

Witness: Ah Sing Ah Ho.

Direct Examination

By Mr. Resner:

Q. Where do you live?

Witness: Kamalapau, Lanai.

Q. I didn't hear that.

A. Kamalapau, Lanai.

Q. Where were you born?

A. Nalehu, Hawaii.

Q. You are a citizen of the United States?

A. Yes.

Q. How far did you go to school?

A. To the 8th grade.

Q. What school? A. Pahala School.

Q. How long have you lived in Lanai?

A. Ten years.

Q. What kind of work do you do?

A. Crane operator.

Q. For what company?

A. Hawaiian Pineapple Company.

(Testimony of Ah Sing Ah Ho.)

Q. How long have you been employed there?

A. Ten years.

Q. Ten years? [477] A. Yes.

Q. Are you a member of the ILWU?

A. Yes.

Q. Did you ever get a jury questionnaire?

A. I did.

Q. When did you get it?

A. Sometime this year, I guess.

Q. Did you fill it out and send it back?

A. Yes.

Q. Was it this year or last year?

(No response.)

Q. 1946 or 1947?

A. I don't remember that.

Q. You are not sure of the year?

A. Not sure, but I know I filled it.

Q. And sent it back? A. Yes.

Q. Are you a member of the ILWU?

A. Yes.

Q. What is your race or nationality?

A. Hawaiian-Chinese.

Mr. Crockett: How old are you?

Witness: 37.

Mr. Crockett: No further questions.

(Witness excused.)

Mr. Resner: James Kia Aikala? [478]

JAMES KIA AIKALA

having been first duly sworn, was examined and testified as follows:

Deputy Clerk: Please state your name.

Witness: James Kia Aikala.

Direct Examination

By Mr. Resner:

Q. Where do you live?

Witness: Kamalapau, Lanai.

Q. How long have you lived there?

A. Fourteen years.

Q. Where were you born?

A. Haiku, Maui.

Q. You are a citizen of the United States?

A. Yes.

Q. What is your race or nationality?

A. Hawaiian.

Q. You are Hawaiian? A. Yes.

Q. What school did you go to?

A. I didn't been to school.

Q. Did you go to school at all? A. No.

Q. You have no formal education?

A. No.

Q. What kind of work do you do?

A. Crane operator.

Q. Where? [479] A. At Lanai.

Q. With the Hawaiian Pineapple Company?

A. Yes.

Q. How long have you had that kind of work?

A. Fourteen years.

(Testimony of James Kia Aikala.)

Q. Are you a member of the ILWU?

A. Yes.

Mr. Resner: That is all.

Mr. Crockett: How old are you?

Witness: Thirty-one.

Mr. Crockett: How old?

Witness: Thirty-one.

Mr. Crockett: No further questions.

(Witness excused.)

SHIGERU YAGI

having been first duly sworn, was examined and testified as follows:

Deputy Clerk: Please state your name.

Witness: Shigeru Yagi.

Direct Examination

By Mr. Resner:

Q. Where do you live?

Witness: Kamalapau, Lanai.

Q. How long have you lived there?

A. About eight years.

Q. How old are you? A. Thirty years.

Q. Where were you born?

A. Hilo, Hawaii.

Q. You are a citizen of the United States?

A. Yes.

Q. What schooling have you had?

A. Twelve years.

(Testimony of Shigeru Yagi.)

Q. Whereabout—what school?

A. Hilo High School.

Q. Did you go all the way through?

A. Yes, I graduated.

Q. What kind of work do you do?

A. I am a crane operator.

Q. In what company? A. Hawaiian Pine.

Q. That is at Lanai? A. Yes.

Q. How long have you been employed there?

A. Almost ten years.

Q. Are you a member of the ILWU?

A. Yes.

Mr. Resner: That is all.

Mr. Crockett: No questions.

(Witness excused.)

BASILISO ARRUIZA

having been first duly sworn, was examined and testified as follows:

Deputy Clerk: Please give your full name.

Witness: Basiliso Arruiza. [481]

Direct Examination

By Mr. Resner:

Mr. Resner: Your name is Basiliso Arruiza?

Witness: Yes.

Q. Where do you live? A. Lanai City.

Q. How long have you lived there?

A. Twenty months.

Q. Where were you born?

(Testimony of Basiliso Arruiza.)

A. Philippine Islands.

Q. Philippine Islands? You are not a citizen of the United States? A. No.

Q. You are a citizen of the Philippine Islands, is that right? A. Yes.

Q. Your race and nationality is Filipino?

A. Filipino.

Q. How long have you been—I withdraw that. What kind of work do you do?

A. Truck driver.

Q. By whom are you employed?

A. Hawaiian Pine.

Q. How long have you had that work?

A. Sixteen months.

Q. Are you a member of the ILWU?

A. Yes.

Q. How old are you? [482]

A. Thirty-eight.

Mr. Resner: That is all.

Cross-Examination

By Mr. Crockett:

Q. How long have you been in the Territory of Hawaii?

Witness: Twenty months.

Q. And where did you live before that?

A. Philippine Islands—just one of the new-comers.

Q. Just one of the new-comers? A. Yes.

Q. In other words, you worked no other place?

(Testimony of Basiliso Arruiza.)

You came from the Philippine Islands and worked on Lanai, and that is the first place?

A. Yes, first place.

Q. And only place you worked?

A. Only place.

Mr. Crockett: No further questions—oh, just one other question. How much schooling did you have in the Philippine Islands?

Witness: Fourth grade.

Q. Fourth grade? A. Yes.

(Witness excused.)

Mr. Resner: I see Mr. Peterson is in the court room; so we will put him on. Mr. Peterson? [483]

HERBERT SIDNEY PETERSON

having been first duly sworn, was examined and testified as follows:

Deputy Clerk: Please give your full name.

Witness: Herbert Sidney Peterson.

Direct Examination

By Mr. Resner:

Q. What is your residence, Mr. Peterson?

Witness: 879 First Street, Kahului.

Q. Where were you born?

A. Nueces, Texas.

Q. What is your age?

(Testimony of Herbert Sidney Peterson.)

A. Last birthday, I was 39.

Q. What kind of education have you had?

A. High school education.

Q. In Texas? A. In Texas.

Q. How long have you been in the Territory?

A. I arrived in the Territory February, 1931.

Q. What kind of work do you do?

A. Store manager.

Q. What store is that? A. Puunene Store.

Q. Is that owned by one of the companies?

A. It is a branch store of the Kahului Store, which is owned by Hawaiian Commercial & Sugar Company.

Q. Is that one of the Alexander & Baldwin enterprises? A. It is. [484]

Q. You are a member of the caucasian race?

A. I am so taken and accepted, yes.

Q. How long have you served on the Grand Jury?

A. This is my first term. I sat on two sessions.

Q. In the year 1947?

A. 1947, that's right.

Q. Have you ever served as a trial juror?

A. Never have.

Q. Are you personally acquainted with the Jury Commissioners—Mr. Pombo, Mr. Chatterton and Judge Wirtz?

A. Yes, having been a resident of Maui for twelve years, I know them all.

Q. You know them all? A. Yes.

(Testimony of Herbert Sidney Peterson.)

Q. Are you familiar with the ILWU?

A. We have an ILWU local on the plantation, and my store employees are members of the ILWU.

Q. Was your company involved in the recent pineapple strike? A. They were not.

Q. Yours is a sugar company?

A. Correct.

Q. What is your attitude toward the ILWU, Mr. Peterson?

A. I believe I have an unbiased attitude towards them.

Q. What is your attitude towards the recent pineapple strike?

A. I don't know enough about the recent pineapple strike to form an opinion. [485]

Q. What is your attitude toward the officials of the ILWU?

A. I have gotten along very amicably with the officials of the ILWU.

Q. Do you know that the defendants in this particular case were arrested in connection with the recent pineapple strike?

A. That is my understanding.

Q. At Lanai—is that your understanding?

A. Yes.

Q. Do you have any feeling about these defendants because of that fact?

A. I don't know anything about the case. The case was never presented to us. I can't form an opinion under those circumstances.

(Testimony of Herbert Sidney Peterson.)

Q. Do you have any feeling about any of the workers who were involved in the pineapple strike?

A. No, none whatsoever.

Mr. Resner: No further questions.

Mr. Crockett: No questions. For the purposes of the record, if the Court please, I think the record should show that Mr. Peterson is also one of the persons who was chosen and sworn in as a grand juror of the 1947 session.

The Court: You are that same Peterson who is on this list of—this active panel?

Witness: Yes, your Honor.

Mr. Resner: I think you can be excused. [486]

The Court: You may go about your affairs, Mr. Peterson.

Witness: Thank you.

(Witness excused.)

Mr. Resner: Mr. Midori Oda?

MIDORI ODA

having been first duly sworn, was examined and testified as follows:

Deputy Clerk: Please give your full name.

Witness: Midori Oda.

Direct Examination

By Mr. Resner:

Q. Your name is Midori Oda?

(Testimony of Midori Oda.)

Witness: Yes.

Q. How old are you? A. Thirty-five.

Q. Where were you born?

A. Lahaina, Maui.

Q. You are a citizen of the United States?

A. Yes.

Q. What is your race or nationality?

A. Japanese.

Q. What kind of work do you do?

A. Crane operator.

Q. At what company? A. Hawaiian Pine.

Q. How long have you had that employment?

A. Ten years.

Q. What schooling have you had?

A. Kam III School.

Q. What—how many grades did you go to in school? A. Fourth grade.

Q. At what school?

A. Kam III School, in Lahaina, Maui.

The Court: Kamehameha III School, Mr. Resner.

Mr. Resner: Are you a member of the ILWU?

Witness: Yes.

Q. And you have been employed at Hawaiian Pine Company for the last few years?

A. Yes.

Mr. Resner: No further questions.

Mr. Crockett: No questions.

(Witness excused.)

SHIGEYUKI MATSUURA

having been first duly sworn, was examined and testified as follows:

Deputy Clerk: Please state your full name.

Witness: Shigeyuki Matsuura.

Direct Examination

By Mr. Resner:

Q. Where do you live?

Witness: Kamalapau, Lanai.

Q. How long have you lived there?

A. Nineteen years. [488]

Q. Where were you born?

A. Lahaina, Maui.

Q. You are a citizen of the United States?

A. Yes, I am.

Q. Your race or nationality is what?

A. Japanese.

Q. What school did you go to?

A. Kam III School.

Q. How many grades did you reach?

A. Fifth grade.

Q. What kind of work do you do on Lanai?

A. Crane operator.

Q. For what company?

A. Hawaiian Pineapple.

Q. How long have you been employed there?

A. Nineteen years.

Q. Are you a member of the ILWU?

A. Yes.

Q. You are? A. Yes.

(Testimony of Shigeyuki Matsuura.)

Mr. Resner: That is all.

Mr. Crockett: No further questions.

(Witness excused.)

ABRAHAM MAKEKAU

having been first duly sworn, was examined and testified as follows:

Deputy Clerk: Please give your full name.

Witness: Abraham Makekau. [489]

Direct Examination

By Mr. Resner:

Q. Where do you live, Mr. Makekau?

Witness: Lanai City.

Q. How long have you lived there?

A. About one year.

Q. Where were you born?

A. Hilo, Hawaii.

Q. How old are you? A. Twenty-six

Q. You are a United States citizen?

A. Yes.

Q. What is your race or nationality?

A. Hawaiian-Chinese.

Q. What kind of work do you do?

A. I am a truck driver during season—and off season, I am a painter.

Q. This is at Lanai? A. Yes.

Q. What kind of schooling have you had?

(Testimony of Abraham Makekau.)

A. Went to the 10th grade.

Q. What school? A. Hilo High.

Q. What company are you employed by?

A. Hawaiian Pine.

Q. Have you been employed there for a few years now? A. Yes.

Q. Are you a member of the ILWU? [490]

A. Yes.

Q. Did you ever receive the jury questionnaire?

A. No.

Q. Not yet? A. Not yet.

Q. How long have you lived at Lanai?

A. I used to be off and on.

Q. But going back, how long have you been there? A. One year.

Mr. Crockett: Are you a registered voter of Lanai?

Witness: I used to be, but I worked in Honolulu and so I never registered over there.

Mr. Crockett: That is all.

Mr. Resner: All right, Mr. Makekau.

(Witness excused.)

ELPIDIO SIRUET

having been first duly sworn, was examined and testified as follows:

Deputy Clerk: Please give your full name.

Witness: Elpidio Siruet.

(Testimony of Elipidio Sirsuet.)

Direct Examination

By Mr. Resner:

Q. Where do you live?

Witness: I live Lanai City.

Q. How long have you lived there?

A. About twelve years. [491]

Q. Where were you born?

A. Philippine Islands.

Q. Are you a citizen of the Philippine Islands?

A. Yes, sir.

Q. How old are you? A. Thirty-eight.

Q. What kind of education have you had?

(No response.)

Q. That is, how far did you go to school?

A. First grade.

Q. That is in the Philippine Islands?

A. Yes, sir.

Q. What kind of work do you do?

A. Carpenter, sir.

Q. I didn't hear that. A. Carpenter.

The Court: Carpenter.

Mr. Resner: By whom are you employed?

(No response.)

Q. Whom do you work for?

A. Lanai City.

Q. Yes, but what company employs you?

(No response.)

Q. Do you know that you work for Hawaiian Pineapple Company? A. Yes, sir. Yes, sir.

(Testimony of Elpidio Siruet.)

Q. How long have you worked there?

A. About two years. [492]

Q. Are you a member of the ILWU?

A. Yes, sir.

Q. And you are a Filipino by nationality or race?

A. Yes, sir.

Mr. Resner: That is all.

Cross-Examination

By Mr. Crockett:

Q. Where did you work before you went to Lanai?

Witness: What you mean?

Mr. Crockett: What?

Witness: What, sir?

The Court: You understand what he asks? He says where did you work before you went to Hawaiian Pine, Lanai?

Witness: I work in—I don't understand.

The Court: You don't understand?

(Witness shaking head.)

Mr. Resner: If Mr. Crockett wants to know, the union secretary is here and can answer the question.

The Court: We are entitled to ask him and find out whether he understands what is going on.

Mr. Crockett: I think I can ask him. What place you live before you go Lanai?

Witness: I live in Hawaii.

Q. Where? A. Hawaii.

(Testimony of Elpidio Siruet.)

Q. You work plantation? [493]

A. Yes, sir.

Q. What plantation? A. Olaa.

Q. What kind of job you have Olaa?

A. Sugar cane.

Q. You mean work outside field? A. Yes.

Q. What kind job you have in the field?

A. Cut cane man.

Q. How much pay you get one day, carpenter, when you work Lanai?

A. I got ninety cents an hour.

Mr. Crockett: That is all. No further questions.

(Witness excused.)

Mr. Resner: Mariano Baldua—oh, he is in the hospital. Mariano Baldua is in the hospital. Narcisso Sipe?

NARCISSO SIPE

having been first duly sworn, was examined and testified as follows:

Deputy Clerk: Please state your full name.

Witness: Narcisso Sipe.

Direct Examination

By Mr. Resner:

Q. Where do you live?

Witness: Lanai City.

Q. How long have you lived there? [494]

A. Eight years.

(Testimony of Narcisso Sipe.)

Q. Where were you born?

A. Olowalu, Maui.

Q. You are a citizen of the United States?

A. Yes.

Q. What is your race or nationality?

A. Filipino.

Q. Where did you go to school, if you did?

A. Kam III School. That is Lahaina.

Q. How many grades did you go to?

A. Sixth grade.

Q. How long have you been at Lanai?

A. Eight years.

Q. What kind of work do you do?

A. Crane fireman.

Q. For what company?

A. Hawaiian Pine Company.

Q. Have you had that same employment for the last eight years?

A. Four years on the crane fireman and four years on the loading pineapple on the pineapple company.

Q. How old are you? A. Thirty-one.

Q. Are you a member of the ILWU?

A. Yes.

Q. Are you a registered voter? A. Yes.

Q. Did you get the jury questionnaire?

A. No. [495]

Mr. Resner: That is all.

(Testimony of Narcisso Sipe.)

Cross-Examination

By Mr. Crockett:

Q. How much do you earn an hour as crane fire-man?

Witness: 90½c.

Q. You say you are a registered voter. When did you register last? A. Last year.

Q. That is, in 1946? A. 1946.

Q. Were you registered in 1944?

A. Yes, I do.

Q. And voted at Lanai City?

A. Lanai City.

Mr. Crockett: No further questions.

Mr. Resner: That is all, Mr. Sipe.

(Witness excused.)

Mr. Resner: Antonio Mendes.

ANTONIO MENDES

having been first duly sworn, was examined and testified as follows:

Deputy Clerk: Please state your full name.

Witness: Antonio Mendes.

Direct Examination

By Mr. Resner:

Q. Where do you live, Mr. Mendes?

Witness: Lanai City. [496]

Q. How long have you lived there?

A. Three years.

(Testimony of Antonio Mendes.)

Q. Where were you born?

A. Lahaina, Maui—Mala Camp.

Q. And you are a citizen of the United States?

A. Yes.

Q. How much schooling have you had?

A. Fourth grade.

Q. What school?

A. Sacred Hearts School, Lahaina.

Q. What kind of work do you do?

A. Mason.

Q. For what company?

A. Hawaiian Pine.

Q. How long have you had that job?

A. About a year now.

Q. About a year? A. About a year.

Q. What is your race?

A. Spanish-Peruvian.

Q. You are caucasian? A. Yes.

Q. Are you a registered voter?

A. Yes, sir.

Q. Did you receive the jury questionnaire?

A. No.

Q. Did you register in Lanai in 1944?

A. No, I registered in Lahaina, 1944. [497]

Q. You registered in Lahaina in 1944?

A. Yes.

Q. That is on Maui? A. Yes.

Q. And in 1946 you registered—

A. In Lanai.

(Testimony of Antonio Mendes.)

Q. Well, did you receive the questionnaire at Lahaina? A. No.

Q. And not at Lanai either? A. No.

Mr. Resner: That is all.

Cross-Examination

By Mr. Crockett:

Q. You know what they are referring to by the questionnaire?

Witness: I guess that is on this jury. That is what you mean.

Q. You never received one?

A. I never did receive one.

Q. Counsel didn't show you a copy of what we refer to as a questionnaire?

A. Well, I didn't see a questionnaire yet.

Mr. Crockett: That is all.

Examination by the Court

The Court: I would like to ask one question in connection with that. You say you registered as a voter in Lahaina in the 1944 elections.

Witness: Yes. [498]

The Court: Were you living in Lahaina then?

Witness: Yes, I living Lahaina that time.

The Court: When did you change your residence to Lanai?

Witness: 1945.

The Court: 1945. That is all.

(Witness excused.)

Mr. Resner: Mr. Tom Yagi.

THOMAS SEIKICHI YAGI

having been first duly sworn, was examined and testified as follows:

Deputy Clerk: Please give your full name.

Witness: Thomas Seikichi Yagi.

Direct Examination

By Mr. Resner:

Q. How do you spell your last name?

Witness: Yagi.

Q. Where do you live? A. Waiehu, Maui.

Q. What is your job. What kind of work do you do? A. Secretary-treasurer.

Q. For the ILWU? A. That's right.

Q. Which local, Mr. Yagi? A. Local 144.

Q. Maui? A. That's right. [499]

Q. What does the membership of that local union include?

A. According to our latest record, it is 5,388.

Q. It is what? A. 5,388.

Q. 5,388. And what territory does that include?

A. Include just Maui.

Q. And what kind of workers does it include?

A. Sugar, pineapple, miscellaneous, longshore.

Q. How long have you been the secretary of the local union?

A. This November will be two years.

Q. How many of those members are citizens?

A. About 40% of the membership.

Q. About 40% of the membership?

A. Yes—would be about 2,150.

(Testimony of Thomas Seikichi Yagi.)

Q. How do you arrive at that figure?

A. 60% is non-citizen, according to our latest record.

Q. And what is the nationality or race of those who are not citizens? A. Majority is Filipino.

Q. The majority is Filipino? A. Yes.

Q. And are the rest of the membership mainly native-born? A. Native-born.

Mr. Resner: Yes. That is all. [500]

Cross-Examination

By Mr. Crockett:

Q. Counsel asked you a question, Mr. Yagi, and you didn't answer. Would you mind answering the question? How did you arrive at the figure—that 40%?

Mr. Resner: I think he did answer it. He said 60% were aliens and the balance, citizens.

Mr. Crockett: How did you arrive at the figure of 40% being citizens?

Witness: When we arrived at the figure of 40% being citizens, that means by our record, union record. We have every record of our membership—a book—we have a record whether they are citizens, non-citizens.

Q. Your record definitely shows that he is and is not a citizen? A. We have that record.

Q. Have you got—what kind of record is that? Have you got a copy of the record so that we can see it—see how you keep the record?

A. Not here at present.

(Testimony of Thomas Seikichi Yagi.)

Mr. Crockett: If the Court please, may I ask the witness be instructed to bring us a sample of the registration card so that we can see just what the record is.

The Court: We will take a ten minute recess and maybe you can——

(Second Circuit Court recessed at 9:48 a.m., reconvened at 10:06 a.m.)

Mr. Crockett: If the Court please, the witness has produced the cards. We will not offer this in evidence, but just to exhibit it to the Court.

Mr. Resner: That is satisfactory.

The Court: Is there any objection to their being exhibited?

Mr. Resner: No, I want it to be exhibited. I want the Court to see the way it is kept.

The Court: Let the record show there has been exhibited as a sample a card that is filled out with a printed word, "Nationality," and the typewritten insertion, "Hawaiian-Chinese" on this particular card. "Birthdate" is printed and then in typewriting is inserted a date for this particular card. "Place," printed; typewritten into the place, "Kahului, Maui" for this particular card. Then on the second line, abbreviated, in printing, "Citizen"; and in typewriting is inserted, "United States." That is the extent of this particular thing of importance?

Mr. Resner: Yes, your Honor.

(Testimony of Thomas Seikichi Yagi.)

The Court: Let the record show that the card is returned to the witness.

Mr. Resner: Yes, it has been exhibited to Mr. Crockett, along with a few other samples—six or eight of them, I think. [502]

Mr. Crockett: Mr. Yagi, in other words at the union headquarters, you keep a card for each individual member—similar to the one you have shown to the Court?

Witness: Yes.

Q. Where did you get the information entered in this card?

A. We have quarterly or yearly tabulation. That means we are going out and have these members sign their name, their address, their citizenship, nationality and place of birth—a form of questionnaire that is constantly—has been for the record.

Q. Have you gone through these cards and made an actual count of the citizens and of the aliens, or is the figure, 40%, just an estimate?

A. The 40% is an estimate. It is not a correct—it is not an exact figure. It is an estimate.

Q. Just an estimate? A. Yes.

Q. How did you arrive at that figure, 40%, as an estimate?

A. Comes to that, I cannot answer that because we took that as an estimate of the counts and it is not an exact number—40%. It is close to 40%.

Q. But you can't tell us how you chose 40%?

A. By tabulating this so-called card.

(Testimony of Thomas Seikichi Yagi.)

Q. You stated just now that you didn't make an actual count of the citizens and aliens. [503]

A. We did make a count of actual—but we cannot give the exact number of percentage.

The Court: Might I ask a question with the consent of Counsel? Are you speaking in your percentage as of the way the record shows today, or are you speaking of it as shown between July and December of last year?

Witness: Between January and this month.

The Court: I see. Is there any way from these cards or from any other method that you have—any facts as to how many of the possible United States citizens actually have registered as voters?

Witness: Yes, we have through the records of the Territorial Government—registered voters.

The Court: Have you any information to give from that—first, I might ask—have you made the comparison yourselves?

Witness: Yes, we did.

Mr. Resner: They did make it for some of them—I don't think complete. It was checked by the list against the registered voters.

The Court: I don't want to go into detail, Mr. Resner. I simply want to get, if he has it in mind, a comparison as to what the percentage of those available as United States citizens under the list of last year were actually registered voters last year. Can you give us any—

Mr. Resner: I might exhibit to the Court and

(Testimony of Thomas Seikichi Yagi.)

show Counsel the way in which it is done. It is not done completely by the register or roster of ILWU members compared with the Register of Voters as is indicated in that sheet which shows those are the ILWU who have registered as voters.

The Court: But it really doesn't give me what I am trying to get—some information about his percentage of United States citizens as against the percentage of those who had the citizenship possibility, how many out of that percentage were in fact registered voters last year.

Mr. Resner: I understand your question.

The Court: If he has any estimate or fact on that. If he hasn't, all right. I thought that while he was here I might get that information.

Mr. Resner: Can you answer that question, Mr. Yagi?

Witness: No, I couldn't.

Mr. Crockett: And when you give a figure of 40%, you haven't tried to segregate as to the ages of the persons? A. Not the ages.

Q. In other words, just——?

A. Just general.

Q. The lump sum of approximately 40% which you estimate to be citizens. A. Yes.

Mr. Crockett: That is all. [505]

Redirect Examination

By Mr. Resner:

Q. Mr. Yagi, did you estimate on the basis of the 60% that those were Filipinos and the others who had not had not acquired citizenship.

(Testimony of Thomas Seikichi Yagi.)

Witness: I don't get you.

Q. You say that 40% of the membership you estimate are citizens and 60% are not citizens.

A. Yes.

Q. What I am getting at is this—does the 60% include the Filipinos who are not citizens?

A. That's right.

Q. That is, most of the 60% is Filipino.

A. Filipino.

Q. I neglected to ask you this—how many members have you at Molokai?

A. On Molokai, according to the last record, we have 700. That is Local 152.

Q. That covers the Island of Molokai?

A. That covers the Island of Molokai.

Q. What kind of industry?

A. Pineapple.

Q. Now, what is the estimate of citizens at Molokai?

Mr. Crockett: Might I ask Counsel if he is referring to citizens who are members of the union or——?

Mr. Resner: No, citizens who are members of the union. [506]

Witness: That I would take—again is based upon 40% is citizens.

Mr. Resner: Is that based upon the division according to nationality?

A. Division according to the registered voters.

Q. What I am getting at—are those who are not citizens mainly Filipino?

(Testimony of Thomas Seikichi Yagi.)

A. That's right. Again it is mainly Filipino who are not citizens.

Mr. Resner: That is all.

Mr. Crockett: That is all.

Mr. Resner: I would like to excuse this witness. you don't want him any more, Mr. Crockett?

Mr. Crockett: No.

Mr. Resner: All right, Mr. Yagi. That is all.

(Witness excused.)

PEDRO DELA CRUZ

having been first duly sworn, was examined and testified as follows:

Deputy Clerk: Please give your full name.

Witness: Pedro Dela Cruz.

Direct Examination

By Mr. Resner:

Q. Your name is Pedro Dela Cruz?

Witness: Yes, sir.

Q. Where do you live? A. Lanai City.

Q. What local is that?

A. Beg your pardon?

Q. What is the number of the local?

A. Local 152—Unit 7.

Q. What kind of workers are included?

A. Pineapple workers.

Q. How many members have you?

(Testimony of Pedro Dela Cruz.)

A. We get—the last time we had, we had 800 dues paying members now.

Q. How many of them are citizens, Mr. Dela Cruz?

A. To the best of my knowledge—this is only a guess now—I think we get 300 citizens—that is Japanese, Hawaiians—citizens.

Q. Yes.

A. And about 500, that is mostly Filipino, non citizens.

Q. The non citizens are mainly Filipino, is that right? A. Yes.

Q. Was the ILWU in your particular union engaged in a strike in the pineapple industry from July 10th to July 15th of last year?

A. Yes, sir.

Q. Do you know the defendants in this case—these men sitting in the court room?

A. Yes, sir.

Q. Are they members of the local union of which you are the officer? A. Yes.

Q. Were they arrested at the time of the strike?

A. Yes.

Mr. Resner: That is all.

Cross-Examination

By Mr. Crockett:

Q. You say about 300 citizens on Lanai who are members of the ILWU?

Witness: Yes, sir.

(Testimony of Pedro Dela Cruz.)

Q. Of those 300 citizens, how many you think are registered as voters?

A. Oh, this is only a guess—I think most of the workers are over 21 years old; so I guess almost 300. I don't know if they are registered, but they are qualified voters, I think.

Q. I am asking you how many you think are registered voters. I am not interested in qualified voters.

A. I don't know.

Q. And these 300 members that you refer to—are they all male, or do they include women?

A. No, maybe we get about between thirty and forty women.

Q. Are they all—the thirty and forty women, are they all citizens?

A. Yes, sir.

Q. All citizens?

A. Yes.

Q. So, then, out of your 300 citizens, you mean then you would have to deduct about 30 to 40 who are women and you would have approximately 270 citizens? Upon [509] what did you base your estimate that you have approximately 270 male citizens as members of the union?

A. I no can tell that, but to the best of my knowledge, I think—that is my guess.

Q. Have you any idea what the total registered vote of male persons in Lanai City is?

A. Male? That is only union members?

Q. No, I am talking about the total registered vote of Lanai City of male persons.

A. What I heard—that electors last year was

(Testimony of Pedro Dela Cruz.)

only about 250. That is only what I heard around.

Registered voters in Lanai, male, about 250.

Q. 250 males registered? A. Yes.

Q. And yet you say your union has 370.

The Court: 270.

Mr. Crockett: 270.

Witness: Qualified voters. I don't know if they were registered—if they were all registered or not.

Q. And your estimate—over what period does that cover? Are you talking now about 1946?

A. That last count we had is that before we send in our new check-off to the company; that is the new check-off that we sent. But in our last roster, we had 1300 members before the last—old contract is expired. But when the old contract expired, we have only 800 dues paying members. [510]

Q. Well, when you say the last check-off, what period do you mean?

A. This was between July 20th and August 20th of this year.

Q. Of this year, 1947. Now, do you have any idea of what the membership of your union was during 1946, between July and December of 1946?

A. That is what I said. We get about 1300 members.

Q. You just stated that that was the number you determined at the last check-off which was in this year, 1947.

Mr. Resner: No, if your Honor please, I think Mr. Crockett was mistaken.

(Testimony of Pedro Dela Cruz.)

The Court: He said it dropped in the last check-off from 1300 to 800.

Mr. Crockett: Pardon me. Have you any idea what your union membership consisted of in 1944?

Witness: We didn't get no union at that time.

Q. Oh, you didn't have a union at that time.

A. In Lanai.

Q. And of your 1300 that you say you had in 1946, what portion of those were citizens or what number of those were citizens?

A. Oh, we get about the same because these citizens—they are not dropping off from our union members. It is mostly the Filipinos going out, coming back.

Mr. Crockett: If the Court please, I would like to ask for a few minutes' recess. When Counsel was questioning this witness—the last question he asked [511] I didn't get. I would like to read over the record again just——.

The Court: We will take a five minute recess.

(The Second Circuit Court recessed at 10:24 and reconvened at 10:29 a.m.)

Mr. Crockett: We have no further questions of this witness, if the Court please.

Mr. Resner: All right, Mr. Dela Cruz.

(Witness excused.)

Mr. Resner: We have one more witness before we rest, your Honor. We have the exhibit that we have not yet copies, identified—that of the voters

in the Honolulu District—their names as against their occupations, and the person who made that compilation will be here in a few minutes. So in order to save the Court's time, I might suggest that Mr. Crockett put on his two witnesses.

The Court: Are you ready to proceed, Mr. Crockett?

Mr. Crockett: Yes, if the Court please.

EDWARD MAU HIN ALU

having been first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Crockett:

Deputy Clerk: Please state your name.

Witness: Edward Mau Hin Alu.

Mr. Crockett: What do you live, Mr. Alu? [512]

Witness: At present at Kuau.

Q. And where are you employed?

A. At Hawaiian Commercial and Sugar Company.

Q. Did you formerly live in Puunene?

A. Yes.

Q. And you are working in Puunene?

A. Yes.

Q. What is your particular occupation?

A. Beg your pardon?

Q. What is your particular job or occupation?

A. Machinist.

(Testimony of Edward Mau Hin Alu.)

Q. Where? Which portion of the plantation?

A. At H. C. & S.

Q. At the mill?

A. At the machine shop.

Q. At the machine shop. And were you previously living in Puunene? A. Yes.

Q. How long have you been living at Kuau?

A. About three weeks now.

Q. Are you a member of the union, Mr. Alu?

A. I am.

Q. What union? A. Local No. 4.

Q. Of the ILWU? A. ILWU.

Q. Are you the same Alu who is mentioned on the Grand Jury list, which was published I think about December, as one of the grand jurors for this circuit? [513]

A. Last December, did you say?

Q. Did you see the list published in the Maui News? A. No, I haven't.

Q. Do you know of any Alu having the same name as yours?

A. Got two other brothers.

Q. Do they have the same first name?

A. No. One is Harry and the other is Alfred.

Q. And you are the only Mau Hin Edward Alu?

A. Yes.

Q. You know of no other in the County of Maui but yourself? A. No.

Q. You haven't been actually called to serve as a grand juror at all at any time?

(Testimony of Edward Mau Hin Alu.)

A. I served in the 1927 or 1928 session.

Q. What that grand jury or trial jury?

A. That is trial.

Mr. Crockett: That is all.

Mr. Resner: No questions.

Witness: You need my services any more?

Mr. Crockett: If the Court please, we have no further need for Mr. Alu and ask that he be excused. ?

Mr. Resner: I don't desire him further.

The Court: You may be excused, Mr. Alu.

(Witness excused.)

Mr. Crockett: Mr. Muroki? [514]

EDWIN KIYOSHI MUROKI

having been first duly sworn, was examined and testified as follows:

Deputy Clerk: Please give your full name?

Witness: Edwin Kiyoshi Muroki.

Direct Examination

By Mr. Crockett:

Q. Where do you live, Mr. Muroki?

Witness: Haiku, Maui.

Q. Where are you employed?

A. Libby, McNeill & Libby, Pauwela.

Q. Where are you registered as a voter?

A. At Libby, Haiku.

(Testimony of Edwin Kiyoshi Muroki.)

Q. That is the 19th precinct?

A. That's right, sir.

Q. What is your particular occupation?

A. I am store keeper at Libby, McNeill & Libby, Pauwela.

Q. Are you a member of the union?

A. Yes, sir.

Q. Which union?

A. I really don't know the number of our union.

Q. Is it one of the locals of the ILWU?

A. That's right.

Q. How long have you been employed at Libby, McNeill & Libby?

A. For the last twelve years. [515]

Q. Did you see your name published in the paper as one of the jurors on the list selected by the Jury Commission to serve as grand jurors?

A. No, I didn't sir.

Q. You know of any other person in the Haiku precinct by the name of Edwin K. Muroki?

A. In fact, there is no one in the Territory that has my name.

Q. So that if your name appears on a list, it refers to you, then?

A. That's right.

Cross-Examination

By Mr. Resner:

Q. You are not a member of the Grand Jury?

Witness: No, I never have been.

The Court: What nationality are you?

(Testimony of Edwin Kiyoshi Muroki.)

Witness: I am Japanese.

Mr. Resner: I think you will stipulate too, Mr. Crockett, that Mr. Alu is not a member of the Grand Jury?

Mr. Crockett: He so testified.

(Witness excused.)

FRANCIS B. DE MELLO

having been first duly sworn, was examined and testified as follows:

Deputy Clerk: Please give your full name. [516]

Witness: Francis B. DeMello.

Direct Examination

By Mr. Crockett:

Q. What is your occupation, Mr. De Mello?

Witness: Lieutenant in charge of identification
—Maui Police Department.

Q. Do you know Mr. Andrew S. Freitas?

A. I do.

Q. Is Mr. Freitas connected with the Police Department?

A. He is the Assistant Chief of Police.

Q. That is, for the County of Maui?

A. For the County of Maui.

Q. Where is Mr. Freitas at the present time?

A. Mr. Freitas is on a vacation on the Mainland.

(Testimony of Francis B. De Mello.)

Q. Were you at Lanai on the 14th day of July of this year? A. I was.

Q. And was Mr. Freitas there at the same time?

A. He was present on the Island at the time.

Q. Do you recall whether or not you were down at Kamalapau on the afternoon of that day?

A. The 14th?

Q. The 14th. A. We were.

Q. Were you present when there was an incident that arose at Kamalapau that afternoon? [517]

A. I was.

Q. Were there other police officers present too?

A. I think there were five or six other officers—Assistant Chief Freitas——.

Q. You needn't give the names. Did the police arrive before the incident or after the incident had started?

A. We got there before the incident.

Q. And as a result of that incident, was a complaint—that is, a complaint filed in court?

A. There was a complaint in court.

Q. Charging certain persons——?

A. For being unlawfully assembled.

Q. Was that complaint made as a result of a complaint by any outside persons, or was that a complaint that was based upon the police being present and eye witnesses of the incident?

Mr. Resner: If your Honor please, I don't see the relevancy of this and I object on that ground.

Mr. Crockett: Might I explain to the Court the

(Testimony of Francis B. De Mello.)

relevancy I have. If the Court please, Counsel for the Defendants is laying considerable stress upon the fact that this incident occurred at Lanai; that these persons are employed by the Hawaiian Pine; that there was a strike there—which raises the inference that the Hawaiian Pineapple Company were the complainants in this particular case. At this time by this question, I propose to prove to the Court and have the record [518] show that this complaint was instigated by the police, based upon their eye witness observation of what they considered was a violation of the laws of the Territory of Hawaii—not the result of any complaint that was made by any person, individual, corporation or any other—that is the sole purpose of this question.

Mr. Resner: I still think it irrelevant. I submit the objection.

The Court: The objection is overruled. Will you read the question, Miss Reporter?

Reporter: (reading) “Was that complaint made as a result of a complaint by any outside persons, or was that a complaint that was made based upon the police being present and eye witnesses of the incident?”

Witness: The complaint was made upon the facts that the police observed at Kamalapau at the time. No one made any complaint other than what the police observed, and from that they formulated their complaint.

Mr. Crockett: You may cross-examine.

(Testimony of Francis B. De Mello.)

Cross-Examination

By Mr. Resner:

Mr. Resner: Was this incident something that grew out of the pineapple strike?

Witness: Yes, sir.

Q. There was a strike on at that particular time?

A. There was. [519]

Q. How did you happen to be over there?

A. On Lanai?

Q. Yes.

A. Well, there was some disturbance on Saturday morning—this incident happened on Monday—and Assistant Chief Freitas had arrived there and had sent for me to go over.

Q. Were you supposed to remain there during the course of the strike? Was that it?

A. When I got over there, I was supposed to stay over there as long as I was told to remain there.

Q. As long as the strike continued?

A. Yes, sir.

Q. But you were not regularly stationed at Lanai? A. No, sir.

Q. Your work is here on Maui?

A. My work takes me on all the Islands of the County of Maui—that is, Molokai, Lanai and on this Island—and I go from one district to the other on this Island—Lahaina, Hana and in Makawao, Paia.

Q. But this is your office here—this is your main place of activity—Maui? A. Yes.

(Testimony of Francis B. De Mello.)

Mr. Resner: That is all.

Examination by the Court

The Court: I would like to ask a question in this connection. Were you taking orders from anybody but the Chief of Police? [520]

Witness: That is all we were taking orders from—the Assistant Chief of Police Freitas, who was present at the time on the Island of Lanai.

The Court: Directly or indirectly were any of your orders coming from the so-called “big five”?

Witness: No, sir.

Mr. Resner: If the Court please, I object to the Court’s question upon the grounds I believe it is irrelevant in view of your Honor’s ruling on the character of the “big five.”

The Court: Any direct interference with the duties of public officials—that is material. I have never barred you from that.

Mr. Resner: I understood your Honor’s ruling at the outset when we were trying to show what we conceived to be the economic and social composition of the Territory and offered proof in that regard, your Honor did not allow it.

The Court: You are quite correct—on the general question of the economic place of these people. But on the question of the direct incidents under investigation, I have never barred you or anyone else from showing that anyone has threatened to influence the action of public officials—jurymen or the police.

(Testimony of Francis B. De Mello.)

Mr. Resner: The record will show my exception to the Court's questions.

The Court: The exception is in the record.

Mr. Crockett: We have no further questions of Mr. De Mello.

(Witness excused.) [521]

EUGENE BAL

having been previously sworn, was recalled to the stand and testified as follows:

Direct Examination

By Mr. Crockett:

Q. If the Court please, Mr. Bal has been previously sworn and I ask that he be instructed he is still under oath.

The Court: That is true.

Mr. Crockett: Mr. Bal, have you a list showing the registered voters of the County of Maui that was compiled after the 1944 election, showing the racial composition of the voters?

Witness: I have such a list.

Q. And was that list compiled in the same way as you have previously testified was done with regard to the 1946 list? A. Yes, sir.

Q. May I have that?

(Witness handing to Counsel for the Prosecution.)

(Testimony of Eugene Bal.)

Q. You have two sheets here. The first sheet refers to the males? A. That is correct.

Q. And the second sheet—what does that refer to? A. Females.

Mr. Crockett: If the Court please, we offer in evidence the lists showing the registered voters for [522] the general election of November 7th, 1944, of male persons for the County of Maui.

The Court: The sheet regarding the male voters will be put in evidence.

Mr. Crockett: You wish to offer the other?

Mr. Resner: I think you might offer them both.

Mr. Crockett: I don't want to offer the other. I will just detach this male sheet.

Mr. Bal, do you also have a list for 1944 showing the vote cast which will show the total voters and the vote cast for the 1944 election?

Witness: That is correct.

Q. And this list which you have is the true list?

A. That is the list prepared in my office for the election of 1944.

Q. And in the same manner as the previous lists were prepared? A. Yes, sir.

The Court: The list of male voters that you have identified as segregated by nationality for 1944 may take the Prosecution's Exhibit "A."

Clerk: I have so marked it Prosecution's Exhibit "A."

Mr. Crockett: The second list, if the Court please, we ask that that be marked Exhibit "B."

(Testimony of Eugene Bal.)

The Court: Any objection to the second list?

Mr. Resner: No.

The Court: It may be marked Prosecution's Exhibit "B"—just the first sheet? [523]

Mr. Crockett: Just the first sheet which we offer in evidence—we ask that this sheet be received in evidence as Prosecution's Exhibit "B."

The Court: So ordered.

Mr. Crockett: That is all, Mr. Bal.

Mr. Resner: I have no questions, your Honor, except that I think the second page should also be in evidence in view of our view of the case.

The Court: That may be marked for identification. The Court's previous ruling—no materiality.

Mr. Resner: They may take the next numbers in order as Defendant's exhibits for identification, and we take an exception to the Court's ruling on the refusal to receive it in evidence.

The Court: Exception noted.

Mr. Resner: What numbers will that be, Mr. Clerk?

Deputy Clerk: Movants' Exhibits 20 and 21.

Mr. Resner: No. 19 will be the photostatic copies of the affidavits of questionnaires—that is, the questionnaires. If your Honor please, we might advise the Court that with regard to various questionnaires that we used—they are being photostated and certified and will be filed as an exhibit when that work is completed. It may take a day or so more.

The Court: The Court can use for the time being

(Testimony of Eugene Bal.)

and Counsel can use the original files that are here.

Mr. Resner: That is correct. These become 20 and 21, do they? [524]

Deputy Clerk: 20 and 21.

(Witness excused.)

Mr. Crockett: May I ask Mr. D. W. Tallant to take the stand, please?

DAVID W. TALLANT

having been first duly sworn, by the Court, was examined and testified as follows:

Direct Examination

By Mr. Crockett:

Q. Will you give us your full name?

Witness: David W. Tallant.

Q. Are you the Deputy Clerk of this court?

A. I am.

Q. Were you acting as such Deputy Clerk last year in December? A. I was.

Q. Mr. Tallant, showing you what has been offered in evidence as Court's Exhibit 2, the minutes of this court for Friday, December 27th, 1946, showing the Honorable Cable A. Wirtz, Judge Presiding, and D. W. Tallant as Deputy Clerk. Are you the clerk that is mentioned in these minutes?

A. I am. I am the clerk mentioned in here.

Q. The minutes show that you at that time drew

(Testimony of David W. Tallant.)

names from the jury box for the Grand Jury panel.

Is that correct? A. That is correct. [525]

Q. Where is the jury box?

A. It is in the vault in the Clerk's Office.

Q. Would you produce the jury box from which you made the drawing at that time?

The Court: We will take a little five-minute recess while you get this.

(Second Circuit Court recessed at 10:50 a.m. and reconvened at 10:58 a.m.)

Mr. Crockett: Mr. Tallant, do you have now the box or boxes which are used in connection with the drawing of the jury?

Witness: I do have the box.

Q. Will you please exhibit them—that is, which boxes do you have?

A. (Indicating): This box here that I now hold in my hand contains—is the box that contains the names of the 50 jurors that were selected by the Jury Commission.

The Court: For which——?

Witness: For the year 1947.

The Court: Grand jury or trial jury?

Witness: Grand jury.

Mr. Crockett: How do you put the names in that box?

Witness: The names are selected from the list made up by the Jury Commissioners.

Q. Do you put the entire list? [526]

A. The entire Grand Jury list.

(Testimony of David W. Tallant.)

Q. You put the entire Grand Jury list?

A. Yes. They are cut up into slips.

Q. And at the time of the drawing of the Grand Jury in December, 1946, were the names of all the persons on the Grand Jury lists placed in this box?

A. They were placed in this box.

Q. And you say they were cut into individual slips?

A. That is correct.

Q. After they are placed in this box, what is next done by you or the Clerk's Office?

A. Upon the return day—after the notice is given to the paper of the drawing of the Grand Jury—when court convenes on that day, upon the instructions of the Court, the Clerk—after first shaking up this jury box—draws the names of 23 grand jurors.

Q. After the names are put in the box, is the box locked or is something done to it in that way?

A. The box is locked.

Q. And who keeps the key?

A. The Chief Clerk of the Court retains the key.

Q. Then after you have shaken the box, you make the drawing, you say?

A. That is correct.

Q. And when you make that drawing, will you explain to the Court what is your practice or how you usually do it?

A. Upon instructions of the Court, after first shaking [527] up the grand jury box containing the

(Testimony of David W. Tallant.)

50 names, one name at a time is drawn until the names of 23 grand jurors are drawn.

Q. And is that the way you did it in 1946?

A. That is the way it was done in 1946.

Q. And at the time when you draw those names, do you have any way of knowing what name you are going to draw?

A. I have no way of knowing.

Q. Do you look into the box at all to see what name you are drawing?

A. I do not. My hand is placed into the box with the cover leaning on my wrist.

Q. In other words, the cover is open only far enough to admit your hand?

A. That is correct.

Q. So that the first information you have as to the name drawn is after you have taken it out of the box?

A. One name at a time, yes.

Q. One name at a time. When you take the name out, what is done then?

A. That name is written down and placed in another box.

Q. By whom is it written?

A. Written by myself as clerk, and the reporter.

Q. And that is in the presence of the Court?

A. That is correct.

Q. And in the presence of other persons who might be present in the court? [528]

A. That is correct.

Q. After the name is taken out and recorded, then what is done?

(Testimony of David W. Tallant.)

A. It is placed in a separate box.

Q. You have that separate box?

A. I do have the box here with me.

Q. Will you exhibit that to the Court?

A. This is the box in which the 23 names were placed.

(Witness exhibiting box.)

Q. How many compartments does that box contain?

A. How many compartments? Two compartments.

Q. Why two compartments?

A. In one of the compartments, the names of the grand jurors are placed and in the other compartment the names of the trial jurors are placed.

Q. And what is done with that box—at least, after the name is placed in that compartment for the Grand Jury, what is done then?

A. It is then returned and placed in the vault in the Clerk's Office.

Q. After the names have been drawn, is the box kept—do the names remain in there, or taken out afterwards?

A. The names remain in here so long as they are not excused by the Court for the term.

Q. Will you open—is that box locked or unlocked? A. This box is not locked.

Q. Will you open the part for the grand jurors and exhibit it to the Court and Counsel for their inspection? [529]

(Testimony of David W. Tallant.)

A. This is the box.

Q. Does that contain any names in there at the present time?

A. This compartment contains some names.

The Court: The Court will inspect it.

(Witness handing to the Court.)

The Court: The compartment that has been shown me here is a felt lined 4 x 6—and in it are folded slips; that is, slips that have a crease in them. Is that crease there at the time they were originally in the box from which they were first drawn?

Witness: They were.

The Court: Or is this crease added there after drawn?

Witness: No, they are made at the time it is placed in the other box.

The Court: That is to say, this slip that I now pull from this box that we are inspecting is typical of the type of slips that are used for originally putting the names on?

Witness: That is correct.

The Court: And at the present time the crease shows it is folded so that the typewritten name on it is on the inside. Is that the way those names are placed in the box—folded so that the names are in the inside?

Witness: That is correct? [530]

The Court: And when you open it out, the name on this particular slip I am using for a sample—there is a number on it, 38. And then a name, An-

(Testimony of David W. Tallant.)

thony A. Tam. Is that typical of the way the slips are produced individually?

Witness: That is correct.

The Court: And the slip is about half an inch by four inches long—typewritten paper.

Witness: About that.

The Court: So, as I understand it, when the names of the 50 are originally in the box before any drawing, they are on slips of this type—folded, with the name inside, and are loose in the box subject to being changed about by shaking and by twisting the hand?

Witness: That is correct.

The Court: Are any of the names tabbed together by glue, rubber band or any other means to keep them together in a group?

Witness: No, the names are not glued in any way.

The Court: They are all separate?

Witness: They are all separate.

Mr. Crockett: At this time, if the Court please, does the Court care to have the Clerk check over those names and read them off to ascertain what the names are in the box at the present time?

The Court: I don't care about it. If Counsel does—— [531]

Mr. Resner: I think it is irrelevant.

Mr. Crockett: Okey. Now, Mr. Tallant, referring back to the first box which you identified—an old—ancient koa box, termite-eaten, approximately

(Testimony of David W. Tallant.

8 x 10 x 6, I would say—which you say is locked. Is this box kept locked all the time?

Witness: That particular box is always kept locked.

Q. And does this contain anything?

A. Contains the names of the difference between 50 and 23—that is, 27.

Q. In other words, names of the persons who have not yet been drawn for the Grand Jury?

A. That is correct.

Q. Have you the key to this?

A. I have the key here.

Q. Would you open this box and exhibit the contents to the Court?

(Witness unlocking box and exhibiting to the Court.)

The Court: Let the record show that the witness in the presence of the Court and Counsel has opened the box indicated, and in it are slips of paper, folded, with the blank side out and the printed side inside. If Counsel wants to check over the names of the remaining 27 in there, you are at liberty to do so.

Mr. Resner: I don't think it is necessary. I do see by random that the first name I pick is Mr. Muroki, who is here.

Mr. Crockett: No purpose to having that in the record. In fact, if the Court pleas, I would like to have the Clerk read off the names which are remaining in the box, if the Court will permit that, to show particularly that person who have been

(Testimony of David V. Tallant.)

selected on the panel—hat their names are still in the jury box for further selection.

The Court: In the course of this, Mr. Tallant, you can take them on by one from the box and put the slips temporarily here (indicating) before they are returned to the box. Let the record show the process is being done openly.

Witness (Drawing from box): List No. 8, Yong Kam Chew. List No. 10, Edwin K. Muroki. List No. 18, Eugene K. Ayes. List No. 5, Roy Tatsumi Ito. List No. 36, Edmund Nunes. List No. 23, Manuel De Ponte. List No. 47, Stanley C. Friel. List No. 12, Louis Sequeira. List No. 26, Mau Hin Edward Alu. List No. 4, Manuel Correia, Jr. List No. 17, Ernest Rezents. List No. 9, Ray M. Allen. List No. 2, Toshio Onuma. List No. 42, Albert G. Simpson. List No. 34, H. W. English. List No. 48, Charles E. Morris. List No. 3, Gottlieb Z. Coleman. List No. 19, Paul A. Haywood. List No. 1, David P. Eldredge. List No. 3, Manuel Feiteira. List No. 28, James M. Fleming. List No. 24, Frank W. Broadbent. List No. 30, Albert D. Waterhouse. List No. 21, [533] Gunn H. Fredholm. List No. 14, Shosaku Nakamoto. List No. 32, Andrew Moodie. And List No. 20, Charles H. Saka.

Mr. Crockett: That is all?

Witness: That is all.

The Court: Let the record show that the slips that he has taken on are of the same character before described—with one fold in the center, folding the name on the inside of the slip and no other indications of other creases or marks.

(Testimony of David W. Tallant.)

8 x 10 x 6, I would say—which you say is locked. Is this box kept locked all the time?

Witness: That particular box is always kept locked.

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A. Contains the names of the difference between 50 and 23—that is, 27.

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(Testimony of David W. Tallant.)

selected on the panel—that their names are still in the jury box for further selection.

The Court: In the course of this, Mr. Tallant, you can take them one by one from the box and put the slips temporarily here (indicating) before they are returned to the box. Let the record show the process is being done openly.

Witness (Drawing from box): List No. 8, Yong Kam Chew. List No. 40, Edwin K. Muroki. List No. 18, Eugene K. Ayers. List No. 5, Roy Tatsumi Ito. List No. 36, Edmund Nunes. List No. 23, Manuel De Ponte. List No. 47, Stanley C. Friel. List No. 12, Louis Sequeira. List No. 26, Mau Hin Edward Alu. List No. 4, Manuel Correia, Jr. List No. 17, Ernest Rezents. List No. 9, Ray M. Allen. List No. 2, Toshio Onuma. List No. 42, Albert G. Simpson. List No. 34, H. W. English. List No. 48, Charles E. Morris. List No. 35, Gottlieb Z. Coleman. List No. 19, Paul A. Haygood. List No. 1, David P. Eldredge. List No. 31, Manuel Feiteira. List No. 28, James M. Fleming. List No. 24, Frank W. Broadbent. List No. 30, Albert D. Waterhouse. List No. 21, [533] Glenn H. Fredholm. List No. 14, Shosaku Nakamoto. List No. 32, Andrew Moodie. And List No. 20, Charles H. Saka.

Mr. Crockett: That is all?

Witness: That is all.

The Court: Let the record show that the slips that he has taken out are of the same character before described—with one fold in the center, folding the name on the inside of the slip and no other indications of other creases or marks.

(Testimony of David W. Tallant.)

Mr. Crockett: Now, Mr. Tallant, for the benefit of any further proceedings that might take place in any other case, will you, in the presence of the Court, return those slips to this Grand Jury box and again lock it?

(Witness returns slips and locks box.)

Mr. Crockett: May the record also show that all the slips which were taken from the Grand Jury box have been returned and locked by the Clerk. As I say, that is for the benefit of any other proceedings that might come about.

The Court: The record may so show.

Mr. Crockett: Just one question I overlooked. When you make the drawing in the court as you have previously testified, do you call out the names as you draw them, just as you did at the present time?

Witness: The names I call out as the slips are taken out of the box. [534]

Q. So that all persons in court can hear the names as they are drawn?

A. That is correct.

Q. How many years have you been Deputy Clerk of this court? A. Twenty-two years.

Mr. Crockett: You may cross-examine.

Cross-Examination

By Mr. Resner:

Q. Mr. Tallant, there are 21 members on the Grand Jury now. Is that right?

(Testimony of David W. Tallant.)

Witness: I haven't checked the list. I believe about 21 now.

Q. Do I understand you drew 23?

A. I drew 23.

Q. What happened to the other two?

A. The—I have my records in the office. I don't know offhand just what happened.

Mr. Resner: I think that in order to make the record complete we should find out what happened to the two who are not serving, if your Honor please. I should like that information in the record.

The Court: That is perfectly proper. Can you get your minutes?

Mr. Crockett: If the Court please, I think that was brought out by Judge Wirtz yesterday. One, Mac Ajifu, was excused by the Court on account of his mental condition and the other one was Mr. Percy, who was [535] excused by the Court—claimed exemption—over 60.

The Court: You want a further check?

Mr. Resner: No, if that is the record. One on account of mental disability and the other claimed his age exemption.

The Court: That is my memory of Judge Wirtz's testimony.

Mr. Resner: Yes, that is my understanding. I want the record to be clear on that. That is all, Mr. Tallant.

The Court: Any further questions of Mr. Tallant?

Mr. Resner: No.

(Testimony of David W. Tallant.)

The Court: Mr. Crockett, any further questions?

Mr. Crockett: I have no further questions of this witness.

The Court: Mr. Bailiff, will you get the Chief Clerk and let him take charge of these so that they can be returned?

(Witness excused.)

Mr. Crockett: If the Court please, we have just one more bit of evidence. Counsel will stipulate that a tabulation which I asked be prepared is a summary of the questionnaires which Judge Wirtz testified were sent out to various persons within the County of Maui. The summary, as I pointed out when Counsel had the list of the 1st Precinct, has a fly sheet on it showing the names that the Court, or, the Commissioners have considered as qualified jurors; [536] those they have listed as questionable; those they have listed as exempted; not qualified; out of the jurisdiction or moved; temporarily out of jurisdiction; deceased; and the questionnaires not received.

Yesterday I asked the Court, and the Court allowed me, to show what would be the total in that particular precinct, and at this time Counsel has stipulated that we may offer in evidence——

Mr. Resner: Well, no, let me explain what I am willing to stipulate to.

Mr. Crockett: Well, let me finish explaining. I have gone through all the questionnaires, at least the folders containing the questionnaires, and

counted the total number that have been found qualified in each precinct, the total number that have been classified as questionable in each precinct, the total number exempt, and so forth in each of the precincts which have been covered by the questionnaires, showing then the total number of persons who have received questionnaires throughout the County with the total number that are qualified or have been classified as qualified by the Jury Commissioners.

The Court: My understanding, aside from the table—is my understanding similar to Counsel's memory and understanding of the testimony of Judge Wirtz on the stand that a fly leaf, or fly leaves with each of these precinct files of questionnaires that had been gathered together from the questionnaires sent out [537] had been tentatively tabulated, showing, first, on one of those fly leaves the names that had been unquestioned by the three Commissioners as qualified; and second, a list of those in which the fly leaf said, "Questionable," but that was a nomination of a list of names that they were not settled in their minds as to their qualifications for further duty; that on the third list were gathered together those names that showed on the returns of the questionnaires those who claimed their exemptions; a further list of those who for reasons appearing somewhere in their discussions they listed as "Not Qualified"; and another list in connection with the other topics on the pre-

cincts to which these questionnaires at that time had been sent out. Is that Counsel's understanding?

Mr. Resner: I understand that, too, Judge, and what I told Mr. Crockett I am willing to stipulate to is this—that if these different files of questionnaires were gone through, the tabulations would come out as they appear on the paper passed on to the Court. But I don't want to be taken to stipulate that we agree with the fact that those who are marked, "Qualified," are in fact qualified, or those who are marked, "Questionable," are questionable, or that any of the conclusions otherwise reached are in fact proper conclusions.

The Court: I understand that these files in themselves and the present condition of them are things [538] that you are not admitting but are only in there to show what the Commissioners did as reflecting upon their actions in trying to get a jury.

Mr. Resner: Yes, it shows that, Judge. We don't stipulate to anything of a substantive character here.

The Court: That is to say merely if the files were meticulously inspected and examined one by one, that the tabulation would be approximately as shown on this sheet.

Mr. Resner: The additions would come out this way.

The Court: Yes. It may be received and marked the Prosecution's next letter.

Deputy Clerk: Prosecution's Exhibit "C."

The Court: "C."

Mr. Crockett: If the Court please, for the information I intended to have a heading on this, but the stenographer omitted a heading on it——

The Court: Summary of questionnaires.

Mr. Crockett: May I be allowed—I will ask the Clerk to put that on there—"Summary of Questionnaires."

If the Court please, the Prosecution has no further evidence.

Mr. Resner: Does this last paper have a number?

Deputy Clerk: Prosecution's Exhibit "C."

The Court: "C."

Mr. Resner: Mr. Uchiyama is here now. Will you take the stand? [539]

TADAO UCHIYAMA

having been first duly sworn, was examined and testified as follows:

Deputy Clerk: Please state your name.

Witness: Tadao Uchiyama.

Direct Examination

By Mr. Resner:

Q. Where do you live?

Witness: Honolua, Lahaina, Maui.

Q. And what is your occupation?

(Testimony of Tadao Uchiyama.)

A. Truck driver.

Q. Are you a member of the ILWU?

A. Yes.

Q. Are you an officer of the group at Honolua?

A. Yes, I am the president.

Q. You are the president. And what unit or branch is that?

A. Unit 8, Agricultural Division.

Q. How long have you lived at Honolua?

A. Eleven years.

Q. And are you familiar with all the people who live there at Honolua? A. Yes.

Q. Now, I want to show you Defendants' Exhibit 13, which is the 1946 register of male voters. Are you familiar with the names that appear on that paper? A. Yes.

Q. And have you gone over that paper? [540]

A. Yes.

Q. And are you familiar with the work and jobs that all those people have? A. Yes.

Q. And would you say that the jobs which are opposite each of those names are the jobs those people have? A. Yes.

Q. Do you know that of your own knowledge?

A. Yes.

Q. You know these people? A. Yes.

Q. Yes, you know them?

(Witness nodding.)

Q. I show you a second list which says, "Members of the ILWU." You have gone through that

(Testimony of Tadao Uchiyama.)

list, have you? That is Defendants' No. 14. You know those people, too, Mr. Uchiyama?

A. Yes.

Q. Are they all members of the ILWU?

A. Yes.

Q. And you know where they all work?

A. They all work—some have gone.

Q. What?

A. Some gone to Honolulu just lately.

Q. But when that list was made up, did those people work in the place that is marked opposite their names? A. Yes. [541]

Q. I see practically all of them worked at Baldwin Packers. A. Yes.

Q. Is that right? A. Yes.

Q. Do you know this of your own knowledge?

A. Yes.

Q. The list shows that all of them worked at Baldwin Packers except three which are P. M. Company. What is that? A. Pioneer Mill.

Q. And all the rest are Baldwin Packers. I will offer these, 13 and 14, in evidence, if your Honor please.

Cross-Examination

By Mr. Crockett:

Q. Where is Honolua?

Witness: That is about eight miles from Lahaina town.

Q. How long did you say you have lived there?

A. Eleven years.

(Testimony of Tadao Uchiyama.)

Q. Is Honolua precinct just one village or do the people live in one place—or scattered around?

A. Majority live one place.

Q. Live where? A. Near one place.

Q. Honolua was originally a camp just for the Baldwin Packers workers, wasn't it? [542]

A. Yes.

Q. So that practically everybody out there except a few county employees are Baldwin Packer employees? Isn't that a fact? A. Yes.

Q. Just roughly speaking, how many people would you say who live at Honolua are not employed at Baldwin Packers?

A. I would say about fifteen. Fifteen or twenty.

Q. Showing you the list which has been marked Exhibit 13, there are numerous persons mentioned here—for instance, store clerk, tractor driver, and others—are they also Baldwin Packer employees?

A. Yes.

Q. And the first two, Louis Ah Sing and Philip Ah Sing, mentioned as farmers—what about them?

A. They are from Honokohau Valley.

Q. And where you mentioned county employees, that is the County of Maui? A. Yes.

Q. So except for those persons, farmers and county employees, all the rest are employees of Baldwin Packers? A. Yes.

Mr. Crockett: That is all.

Mr. Resner: I offer those two exhibits in evidence your Honor—13 and 14.

(Testimony of Tadao Uchiyama.)

The Court: They may be received with the same number they carried for identification. [543]

Mr. Resner: That is all, Mr. Uchiyama.

(Witness excused.)

Mr. Crockett: We have nothing further, if the Court please.

Mr. Resner: I should like to offer—I have served Counsel an Amendment to Defendants' Challenges and Motions in Re Grand Jury Panel and Array, and if your Honor please, this is purely to conform to proof—to describe the defendants in the case pursuant to the testimony they gave on the stand—that is, the occupation and nationality—or, race.

The Court: The amendment may be marked and filed.

Mr. Resner: If your Honor please, that completes the showing on behalf of the defendants in the case.

The Court: Are Counsel ready for argument now?

Mr. Resner: Well, I should like to ask the Court's leave to argue at 1:30.

The Court: With a little preparation you might get it in order?

Mr. Resner: Better in order than it is now, Judge.

The Court: That sounds reasonable. Any objection to it?

Mr. Crockett: Will the Court reconvene at 1:30 or two o'clock?

The Court: 1:30.

(The Second Circuit Court recessed at 11:32 a.m.) [544]

(The Second Circuit Court reconvened at 1:30 p.m.)

Mr. Crockett: If the Court please, at the time the Court took a recess, we stated that we had no further evidence to offer, but during the recess while checking up, I find that the Minutes relative to the drawing of the grand jurors was offered—presented by the Court as the Court's Exhibit 2 and marked by the Clerk for identification. I was under the impression that that was an exhibit and not merely for identification. At this time, may I ask—?

The Court: Is there any objection to its being made a full exhibit of the case?

Mr. Resner: No, your Honor. I understand it is the Court's exhibit?

The Court: Yes. But I wanted you to have an opportunity to object, if you desire. The document may take the same number as the exhibit in the case.

Mr. Crockett: And may I also, if the Court please, be permitted to offer in evidence the certified copy of the full Charge which was given to the Grand Jury at the time when the 1947 grand jurors were first called for their March session. The Court referred to portions of the Charge to the Grand Jury yesterday when instructing the Grand Jury, and I think it valuable to the record to have the entire Charge go in.